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# PROBLEMS IN THE DEPARTMENT OF THE INTERIOR'S PROGRAM FOR THE COLLECTION OF FEES FOR THE ABANDONED MINE LAND [AML] FUND

ORIGINAL

COMPLETED

## HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

JULY 11, 1985

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# PROBLEMS IN THE DEPARTMENT OF THE INTERIOR'S PROGRAM FOR THE COLLECTION OF FEES FOR THE ABANDONED MINE LAND [AML] FUND

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THURSDAY, JULY 11, 1985

House of Representatives,
Environment, Energy,
and Natural Resources Subcommittee
of the Committee on Government Operations,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representatives Mike Synar, Joe Kolter, Albert G. Bustamante, William F. Clinger, Jr., and Richard K. Armey.

Also present: Kathryn Seddon, counsel; Becky Meadows, clerk; James Tapper, minority professional staff, Committee on Government Operations; and Pasquale Esposito, GAO detailee.

## OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. Synar. The subcommittee will come to order.

Today the Subcommittee on Environment, Energy, and Natural Resources will be examining the Abandoned Mine Land Fund Program [AML] administered by the Office of Surface Mining.

Money paid into the AML fund by coal operators is used to eliminate safety hazards and to repair environmental damage resulting from coal mining which occurred prior to enactment of the Surface Mining Control and Reclamation Act of 1977.

Fees are based on the amount of coal production as reported to OSM by the operators. The money pays for the restoration of land and water resources adversely affected by past coal mining, to seal and fill dangerous abandoned deep mine tunnels, and to control and abate water pollution caused by coal mine drainage. The law requires that priority be given to projects which protect public safety and health.

The abandoned mine land fund has a life span of only 15 years. The clock is running; half of that time is gone. No one knows how many sites require repair, nor how costly it will be. Generally, however, there is agreement that the expected $3 billion in receipts over the life of the fund will cover only one-tenth of the cost to repair eligible sites. Obviously, every penny counts, especially if the administration succeeds in its proposal to exclude AML sites from eligibility for Superfund money.

Now, over the years, the Office of Surface Mining has painted a rosy picture of its performance in AML fee collection. Last year, for example, OSM told this subcommittee that efforts in this area were successful because 98 percent of the known debt had been collected, and that it had been unable to identify any significant amount of unreported or underreported debt.

However, the success of the program, which depends upon self-reporting by the very people who pay the fees, cannot be evaluated on the basis of reported debt only. It is also important to know something about the unreported debt, the effectiveness of efforts to identify that unreported debt, and the success of efforts to identify and correct problems in the reporting system.

Now, today, we will examine these questions because, quite simply, uncollected money means that dangerous and environmentally harmful sites will be left unrestored. At best, given current trends in the availability of cleanup money, only the most dangerous sites will be restored, leaving land and water resources to continue to deteriorate.

Since the subcommittee undertook this inquiry regarding the AML Program, the Office of Surface Mining has initiated some improvements. But we are closer to 1992 than 1977, and I am very concerned that the recent flurry of activity may be too little, too late.

At this time I will call upon Mr. Armey for an opening statement from the minority.

Mr. **Armey**. Thank you, Mr. Chairman.

Mr. Clinger's duties make it impossible for him to be here this morning, although I understand he will be here later. I ask unanimous consent to put his statement in the record.

Mr. **Synar**. Without objection.

[The opening statement of Mr. Clinger follows:]

# STATEMENT OF THE HONORABLE WILLIAM F. CLINGER, JR.

JULY 11, 1985

THANK YOU MR. CHAIRMAN. TODAY WE ARE REVIEWING OSM'S ADMINISTRATION OF THE ABANDONED MINE LAND RECLAMATION FUND, WHICH IS PERHAPS THE SINGLE MOST IMPORTANT PROGRAM AT OSM. THIS FUND IS DESIGNED TO PROVIDE THE MONIES FOR RECLAMATION OF THE LAND WHICH WAS MINED BEFORE THE SURFACE MINING ACT WAS ENACTED IN 1977. CURRENT MINE OPERATORS MUST RECLAIM THEIR OWN SITES, BUT MANY ACRES MINED PRIOR TO 1977 REMAIN SCARRED AND SEEPING POLLUTANTS. MANY OF THOSE SITES ARE IN MY HOME STATE OF PENNSYLVANIA. THOSE CAUSING HEALTH, SAFETY AND ENVIRONMENTAL HAZARDS MUST BE RECLAIMED AND THAT IS WHAT THE AML FUND IS DESIGNED TO DO.

THE AML FUND IS ONLY TO LAST THROUGH 1992 UNDER TITLE IV OF SMCRA. AND THERE IS NO QUESTION THAT THE $3 BILLION WHICH WILL HAVE BEEN COLLECTED BY THROUGH THE LIFE OF THE PROGRAM IS INSUFFICIENT TO REPAIR ALL OF THE DAMAGE DONE PRIOR TO 1977. THAT IS WHY WE MUST LOOK CAREFULLY AT OSM'S EFFORTS TO COLLECT THE FEES GOING INTO THE AML FUND.

TO ITS CREDIT, OSM HAS COLLECTED APPROXIMATELY $200 MILLION PER YEAR FOR THE AML FUND AND, ON THE AVERAGE, COLLECTS 98% OF THE KNOWN DEBT. I BELIEVE THIS IS A JOB WELL DONE. BUT I ALSO KNOW THERE IS ROOM FOR IMPROVEMENT. AS I KNOW WE WILL HEAR TODAY, IT IS THE ACCURACY OF COAL PRODUCTION FIGURES UPON WHICH AML FEES ARE ASSESSED THAT IS THE CORE OF A FUND ADEQUATE TO RECLAIM AS MUCH MINED LAND AS POSSIBLE. THE MORE PRODUCTION REPORTED, THE MORE FEES

COLLECTED. TODAY WE WILL LOOK AT HOW SUCH DATA IS COLLECTED AND THE DIFFICULTIES ASSOCIATED WITH ITS COLLECTION. I AM HOPEFUL THAT WE CAN FOCUS ON POSITIVE PROGRAMATIC SUGGESTIONS IN OUR REVIEW.

WHILE THERE IS NO DOUBT THAT COLLECTION AND USE OF AML FEES IS INTEGRAL TO RECLAMATION EFFORTS, WE MUST ALSO LOOK AT CREATIVE ALTERNATIVES TO RELYING ON THE AML FUND -- IT IS SCHEDULED TO EXPIRE AND IS CLEARLY INSUFFICIENT. ONE SUCH ALTERNATIVE IS THE CONCEPT OF REMINING, WHICH WOULD ALLOW NEW OPERATORS TO REMINE OLD SITES AND THUS BE RESPONSIBLE FOR A CERTAIN LEVEL OF RECLAMATION. THIS WOULD BE RECLAMATION OF OLD SITES BY THE PRIVATE SECTOR, NOT BASED ON THE USE OF GOVERNMENT ADMINISTERED FUNDS. I HOPE WE CAN TURN OUR ATTENTION TO THESE MATTERS ALSO AS WE REVIEW OSM'S EFFORTS TO ADMINISTER THE SURFACE MINING ACT AND TO PROVIDE FOR THE RECLAMATION OF OUR NATION'S HILLS, VALLEYS AND STREAMS.

MR. CHAIRMAN, I JOIN YOU IN WELCOMING OUR WITNESSES AND I LOOK FORWARD TO HEARING THEIR TESTIMONY.

Mr. **Armey**. And I have a short statement of my own if it is in order at this time.

Mr. **Synar**. Absolutely. You are first I might add.

Mr. **Armey**. Thank you, Mr. Chairman.

I am pleased to be here this morning to learn more about the Office of Surface Mining's efforts to collect funds owed to the abandoned mine reclamation fund. As members of this subcommittee and the Government Operations Committee, we are charged with certain oversight responsibilities. It is our duty to ensure that Federal agencies carry out their duties efficiently and effectively. I don't take this responsibility lightly. While the Office of Surface Mining argues it has done a good job collecting fees, some have challenged OSM's effectiveness.

One particular aspect I am concerned with is the amount of money owed to the fund but which is yet uncollected. There appears to be evidence that there is underreporting of production, and, hence, debt owed to the fund. I am interested in what steps OSM has undertaken and has planned to ensure that money owed the fund is paid. I hope this hearing will address these concerns.

Mr. Chairman, I want to commend you in bringing this hearing together. I am sure you have a good list of witnesses for us, and I look forward to hearing them.

Mr. **Synar**. Thank you very much, Dick, I appreciate it.

Our first panel of witnesses will be Mr. Robert Beuley, assistant inspector general for auditing, Office of the Inspector General, Department of the Interior, and he will be accompanied today by Leon Snead, assistant inspector general for auditing, and Mr. Andrew Fedak, who is the supervisory auditor.

Gentlemen, as you are aware, the committee policy is to swear in all witnesses, past and present, in order not to prejudice any witnesses.

Do any of the three of you have any objections to being sworn in?

Mr. **Beuley**. No, sir.

Mr. **Snead**. No, sir.

Mr. **Fedak**. No, sir.

Mr. **Synar**. If you would rise and raise your right hand.

[Witnesses sworn.]

Mr. **Synar**. Thank you very much.

Mr. Beuley, your whole statement will be made a part of the record. If you would like to summarize at this time, we look forward to your testimony.

## STATEMENT OF ROBERT W. BEULEY, ASSISTANT INSPECTOR GENERAL FOR AUDITING, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEON SNEAD, ACTING ASSISTANT INSPECTOR GENERAL FOR AUDITING, AND ANDREW FEDAK, AUDIT SUPERVISOR

Mr. **Beuley**. Mr. Chairman, I would like to thank you and the members of the subcommittee for inviting us here today. I am Robert Beuley, the acting inspector general. To my left is Mr. Leon Snead, who is acting assistant inspector general for auditing, and Mr. Fedak, to my right, who is an audit supervisor and was in charge of both the audits that you are interested in, concerning the Fee Compliance Program.

The Office of Inspector General issued an audit report in February 1985 regarding the collection of reclamation fees under the Surface Mining Control and Reclamation Act. A prior audit report was issued in March 1981. It identified substantial problems in several areas of the program. We reported that the fee compliance audits failed to identify potential fee underpayments of about $1.1 million and that vague regulations resulted in fee underpayments of at least $323,000.

We also reported that collection and enforcement actions against delinquent operators have not been timely or aggressive, the management information system contained substantial errors and did not provide the information needed to manage the program, and workload management procedures were not effective in assuring that those companies most likely to be delinquent in their fee payments were given audit priority.

Our recent audit found that some of the same problems found during our prior audit have not been corrected. In response to our prior audit OSM developed operating procedures for conducting fee compliance audits; however, our current audit showed that these procedures were not always followed. We identified one or more deficiencies in the 82 or the 83 fee compliance audits we reviewed, and concluded that 38 of the 83 audits were not adequate to assure that underpayments were identified.

We again found delays in both OSM and the Solicitor's Office in initiating action to collect delinquent fees. OSM did not have an adequate audit followup and tracking system, which resulted in failure to issue bills for the collection of delinquent fees totaling $426,000 which had been identified by the OSM audits, and a failure to forward eight cases totaling $125,000 to the Solicitor's Office that had been in an OSM desk drawer for about 6 months.

At the Solicitor's Office we found delays ranging from 6 to 26 months on 24 of the 38 cases we reviewed. The delays occurred at various stages of the cases, including sending demand-for-payment letters, filing complaints with the courts, and taking action after judgments were obtained.

We also found a lack of coordination between OSM and the Solicitor's Office. The Solicitor's Office had no record of having received 26 of the 131 cases we reviewed which OSM records showed had been referred to them. As a result, no action had been taken to collect delinquent fees of about $201,000.

We also concluded that OSM could improve its efforts in identifying delinquent fees by using information available from other Federal agencies. Our use of this information identified potential additional fees due OSM of about $192,000. In addition, we asked OSM to determine whether additional fees of about $900,000 are due from 50 operators which failed to respond to our inquiries concerning variances in tonnages reported to OSM and tonnages sold and reported to other Federal agencies.

Other problems identified in our review included the processing of refunds without appropriate authorization; substantial workload imbalances among the field offices resulting in some offices performing routine and repeat audits, while others had sizable backlogs of audits of companies more likely to be delinquent in their fee payments; lack of adequate supervision; inadequate and inappropriate training; lack of uniform performance standards; lack of quality control and quality assurance reviews to assure that audits are performed according to the OSM standards; inadequate management information reports; and the need to revise the qualifications for the fee compliance position.

We made 24 recommendations, including 21 to OSM and 3 to the Solicitor's Office, which we believe will substantially enhance the program if properly implemented. The response from OSM indicated that action has been initiated to implement most of the recommendations, and we consider 17 of the 21 to be resolved.

I should point out that resolved means that either the recommendation has been implemented or an acceptable action plan has been submitted. Only two of the recommendations have actually been implemented to date. We will request OSM to provide additional information concerning the remaining recommendations. Under the Department's procedures, the Assistant Secretary for Policy, Budget, and Administration has the management responsibility for tracking the recommendations through implementation.

Our primary recommendation is that OSM revise the Fee Compliance Program organizational structure by removing the activity from the Abandoned Mine Land Program and placing it under the Assistant Director for Management and Budget, which had the responsibility for other finance and accounting related functions within OSM at the time of our audit. We concluded that the current decentralized organizational structure was a major contributing factor to many of the problems identified in our audit.

The headquarters fee compliance staff does not have line authority over the fee compliance officers in the field, and the field staff were supervised by individuals who generally did not have fee compliance or audit training or work experience.

OSM has taken some steps toward implementing the recommendation. A new Assistant Directorate for Finance and Accounting has been established and the fee compliance accounting, billing and collection functions will be transferred to this unit. We understand that OSM recently completed a study to evaluate the impact of transferring the fee compliance audit staff to this unit, but a final decision has not yet been made. We believe that the transfer of the entire fee compliance staff to this unit is necessary to adequately correct the problems we identified and to assure that the program gets the attention it deserves.

OSM appears to be taking appropriate action to address most of our recommendations, and indicated that these actions would generally be completed by the end of this fiscal year. In response to our report OSM has initiated action to determine whether additional fees totaling $1,149,000 are due from operators; revise the policies and procedures for conducting fee compliance audits and reemphasize the need to follow these procedures; develop procedures for reviewing fee compliance audit work and conducting quality assurance reviews of the program; establish procedures for obtaining and analyzing information from other Federal agencies for use in identifying unreported fees; establish priorities and procedures for selecting companies for audits which are most likely to be delinquent in their fee payment; implement an audit tracking system; convert the fee compliance specialist positions to auditor positions; correct the deficiencies relating to processing refunds; improve training; and development uniform performance standards.

The unresolved recommendations concern reorganization improvements needed in the management information system and the need to reconcile OSM and Solicitor's Office records.

We have not completed our evaluation of the Solicitor's Office response to this report, but we understand that problems have been encountered in development of their management information system. We will evaluate the response as part of the current followup audit of the solicitor's office.

Considering the importance of the program, we plan to conduct another followup audit in fiscal year 1986 to ensure that the problems noted here have been corrected

This concludes my statement, and we will be glad to answer any questions.

[The prepared statement of Mr. Beuley follows:]

# STATEMENT OF ROBERT W. BEULEY, ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
ON THE
ABANDONED MINE RECLAMATION FUND FEE COMPLIANCE PROGRAM
JULY 11, 1985

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here to discuss our audit regarding the collection of reclamation fees owed to the Government under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Act). The Office of Inspector General recently completed an audit of the Office of Surface Mining's (OSM) administration of its fee compliance program, and issued an audit report entitled, "Review of Abandoned Mine Reclamation Fund Fee Compliance Program, Office of Surface Mining Reclamation and Enforcement" (Report No. E-EM-OSM-07-83) on February 15, 1985. The audit covered activities for the period October 1982 through February 1984 at OSM's headquarters in Washington, DC; the Branch of Financial Operations in Denver, Colorado; and OSM field offices in Pennsylvania, Kentucky, New Mexico, Alabama, Tennessee, and West Virginia. We also reviewed activities at the Solicitor's Office headquarters in Washington, DC and field offices in West Virginia and Tennessee.

The purpose of our audit was to evaluate the effectiveness of the program in assuring that coal mine operators are paying the proper reclamation fees and that appropriate action is taken to collect delinquent fees. We also evaluated the adequacy of actions taken by OSM and the Solicitor's Office to correct the problems identified in our prior audit report entitled, "Abandoned Mine Reclamation Fund Fee Collection Program, Office of Surface Mining Reclamation and Enforcement" [Report No. E-EM-OSM-3-80] issued on March 31, 1981.

A brief description of the program is presented here so that the results of the audits can be put in the proper perspective.

The Act requires all coal mine operators to pay a reclamation fee on coal produced after September 30, 1977. The fees are generally based on tonnage rates of 35 cents for surface mined coal, 15 cents for underground mined coal, and 10 cents for lignite. OSM collects over $200 million a year, which is placed in the Abandoned Mine Reclamation Fund and used to conduct a comprehensive reclamation program to rectify adverse conditions resulting from past coal mining operations.

At the time of our review, OSM had a staff of 29 fee compliance officers (recently converted to auditor positions) located in 10 field offices who were responsible for verifying the accuracy of reclamation fee payments through periodic compliance reviews (audits) of coal company records and for initiating collection and enforcement action against operators not in compliance with the reclamation fee provisions of the Act. The Office of the Solicitor is responsible for collection and enforcement action against operators delinquent in their reclamation fee payments.

Our March 1981 audit report contained 34 recommendations to correct problems concerning (1) vague regulations which had resulted in differing interpretations by operators and reclamation fee underpayments; (2) the lack of adequate procedures for scheduling, conducting, and monitoring fee compliance audit activities, (3) deficiencies in the automated management information system, which did not adequately serve the needs of OSM and contained significant errors in some portions of the data base, (4) the lack of timely collection and enforcement action against delinquent operators, and (5) the need for better coordination with state and federal agencies.

OSM's response to the audit report indicated a commitment to correct these problems. Some of the actions taken subsequent to the audit included revision of the regulations to clarify the party responsible for the fee and the procedures for computing the fee, and development of operating procedures for conducting fee compliance audits. Our followup audit indicated, however, that several of the problems identified in our initial audit had not been corrected.

In response to our prior audit, OSM developed operating procedures for conducting fee compliance audits. However, our current audit showed that the procedures were not being followed. We identified one or more deficiencies in 82 of the 83 fee compliance audits we reviewed, and concluded that 38 of the 83 audits were not adequate to assure that fee underpayments were identified. Our review of the 83 audit files and reaudits of 6 companies identified additional fees due of about $57,000.

We again found delays at both OSM and the Solicitor's Office in initiating action to collect delinquent fees. OSM did not have an adequate audit followup and tracking system which resulted in the failure to issue bills of collection for delinquent fees totaling $426,000 which had been identified by OSM audits, and the failure to forward eight cases totaling $125,000 to the Solicitor's Office which had been in an OSM desk drawer for about six months. At the Solicitor's Office, we found delays ranging from 6 to 26 months on 24 of the 38 cases we reviewed. The delays occurred at various stages of the cases, including sending demand for payment letters, filing complaints with the courts, and taking action after a judgement was obtained.

We also found a lack of coordination between OSM and the Solicitor's Office. The Solicitor's Office had no record of having received 26 of 131 cases we reviewed which OSM records showed had been referred to them. As a result, no action was being taken to collect delinquent fees of about $201,000.

We also concluded that OSM could improve its efforts in identifying delinquent fees by using information available from other federal agencies. Our use of this information identified potential additional fees due OSM of about $192,000. In addition, we have asked OSM to determine whether additional fees of about $900,000 are due from 50 operators which failed to respond to our inquiries concerning variances in the tonnage reported to OSM and the tonnage sold or reported to other federal agencies.

Other problems identified in our review included the processing of refunds without appropriate authorization; substantial workload imbalances among the field offices, resulting in some offices performing routine and repeat audits, while others had sizable backlogs of audits of companies more likely to be delinquent in their fee payments; the lack of adequate supervision; inadequate and inappropriate training; the lack of uniform performance standards (the present standards generally emphasized quantity of audits rather than quality); the lack of quality control and quality assurance reviews to assure that audits are performed according to OSM standards and that the fee compliance program is operating effectively; inadequate management information reports; and the need to revise the qualifications for the fee compliance positions.

We made 24 recommendations, including 21 to OSM and 3 to the Solicitor's Office, which we believe will substantially enhance the program if properly implemented.

The response from OSM indicated that action has been initiated to implement most of the recommendations, and we consider 17 of the 21 recommendations resolved. I should point out that "resolved" means that either the recommendation has been implemented or an acceptable action plan has been prepared. Only two of the recommendations have actually been implemented, and we will be requesting OSM to provide additional information concerning the remaining recommendations. Under the Department's audit followup procedures, the Assistant Secretary for Policy, Budget, and Administration will track the recommendations until they are fully implemented.

Our primary recommendation to OSM is that it revise the fee compliance program organizational structure by removing the activity from the Abandoned Mine Lands Program and placing it under the Assistant Director for Management and Budget, which has the expertise and responsibility for other finance and accounting-related functions within OSM. We concluded that the current decentralized organizational structure was a major contributing factor to many of the problems identified by our audit. The headquarter's fee compliance staff does not have line authority over the fee compliance officers in the field and the field staff were supervised by individuals who generally did not have fee compliance or audit training or work experience.

OSM has taken some steps toward implementing the recommendation. A new Assistant Directorate for Finance and Accounting has been established, and the fee compliance accounting, billing, and collection functions will be transferred to this new unit. We understand that OSM recently completed a study to evaluate the impact of transferring the fee compliance audit staff to this unit, but that a final decision has not yet been made. We believe that the transfer of the entire fee compliance staff to this unit is necessary to adequately correct the problems we identified and to assure that the program gets the attention it deserves.

.OSM appears to be taking appropriate action to address most of our other recommendations and indicated that these actions would generally be completed by the end of this fiscal year. OSM's response to our audit report stated that the following actions have been initiated.

1. OSM is in the process of determining whether potential additional fees of approximately $1,149,000 identified by our audit are due. (August 1985)

2. OSM is taking steps to improve workload management. A model is being developed which will be used for establishing audit priorities and selecting companies for audit which are most likely to be underreporting fees. Annual audit workplans will be developed by the headquarters' staff. (September 30, 1985)

3. A study of staffing was to be completed by June 30, 1985. However, a decision on staffing needs cannot be made until a decision is made concerning the organizational structure. (No target date provided)

4. Steps have been taken to improve the quality of fee compliance audits. A directive was issued to all fee compliance staff on April 12, 1985, emphasizing the importance and necessity of following OSM audit guidelines. The procedures are being revised to include an audit checklist and procedures for estimating tonnage when a coal company's records are inadequate. (September 30, 1985)

We believe, however, that the organizational changes we recommended are necessary to assure that the fee compliance staff receives the supervision and direction necessary to assure the quality of the audit work.

5. OSM has established a new position which will have the responsibility for developing procedures for obtaining and analyzing tonnage data from other federal agencies to identify fee underpayments. (September 30, 1985)

6. OSM has agreed to develop an audit tracking system. (September 30, 1985)

7. The procedural deficiencies that resulted in refunds being processed without the required authorization have been corrected.

8. OSM has addressed our concerns about the qualifications of fee compliance officers by converting these positions to auditor positions. Additional training will be provided to the current staff who do not meet the qualifications for the auditor position.

9. Draft guidelines for conducting management reviews were pilot tested in four offices and are currently being revised. The evaluations of field office activities are being postponed until a decision is made concerning the reorganization. (December 31, 1985)

10. Uniform performance standards are being developed and an instructional/operational manual is being prepared. (September 30, 1985)

The unresolved recommendations concern the reorganization, improvements needed in the management information system, and the need to reconcile OSM and Solicitor's Office records.

We have not completed our evaluation of the Solicitor's Office response to the report, but we understand that problems have been encountered in the development of its management information system. We will evaluate the response as part of our current audit of the Solicitor's Office.

Considering the importance of this program, we plan to conduct a followup review in fiscal year 1986 to ensure that the problems identified in our report have been corrected.

This concludes my statement, Mr. Chairman. We will be glad to answer any questions.

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

ROBERT W. BEULEY, CPA, CIA, CISA

is the Assistant Inspector General for Auditing at the Department of the Interior in Washington, D.C. To accomplish the auditing mission of the Department, he directs about 220 auditors in 3 U.S. regional offices and in overseas regional offices located in the Virgin Islands, Guam, and American Samoa.

He joined the IG's office at Interior in January 1980 following an assignment in the Department of Commerce. At Commerce, he was the Assistant Director of the Financial, Administrative, and Automatic Data Processing Division in the Office of the Inspector General.

Prior to that assignment, he was in the IG's Office of the Department of Agriculture in three separate posts, serving as Director, Headquarters Division; Assistant Director, Policy and Resources; and Director, Agriculture, Economics and Departmental Administration Division.

Before going to Agriculture, he was Chief Auditor of the Office of Revenue Sharing in the Treasury Department for 18 months and spent approximately 13 years in the U.S. Army Audit Agency, where he held various audit management positions in the headquarters and three district offices.

Beuley was 1981-82 Chairman of the Federal Audit Executive Council. He is on the Board of Governors of the Washington Chapter of the Institute of Internal Auditors (IIA); was 1982-83 Chairman of the IIA Seminar and Workshop Committee; and is 1983-84 member of IIA Long-Range Planning Committee. He is a member of the Financial Management Standards Board of the Association of Government Accountants. He also has an MBA in Management and a BS in Accounting.

In 1984 he was selected by President Reagan to receive the rank of Meritorious Executive.

United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

### LEON SNEAD

is a Regional Audit Manager in the Office of Inspector General, U.S. Department of the Interior. He has held this position since May 1980. Prior to joining Interior, Snead held the position of Program Audit Manager with the Department of Energy, he was an Audit Manager with the Office of Revenue Sharing, Department of Treasury, and he held several auditing positions with the U.S. Army Audit Agency in the United States and Europe. Snead has a BBA in Accounting, J.D. in Law, and is a Certified Internal Auditor. He is also a member of the Institute of Internal Auditors.

### ANDREW FEDAK

Andrew Fedak is an audit supervisor in the Office of Inspector General, U.S. Department of the Interior. He has been with the office since August 1973 and in his current position since November 1980. Prior to joining the Interior Department, he taught high school mathematics and science for four years. He has a BA degree in mathematics and an MBA degree from the University of Pittsburgh.

Mr. **Synar**. Thank you very much. I appreciate those remarks, and I also want to take this opportunity to thank you all for what I think is an excellent report.

Now Mr. Beuley, in the statement to be presented later by Mr. Christensen, he states:

> Audits and related investigations are our primary means for determining that all coal production has been reported to us and that all money owed has been paid.

In light of this I am concerned about your testimony regarding the inadequacy of audits to assure that the fee underpayments are identified. Therefore, let's take a couple of minutes here and discuss in detail what is behind your statement.

On page 20 of your 1985 inspector general's report you summarize the finding of the audit reviews, and it shows, for example, that of the 83 audits examined, the inspector general found that fee compliance auditors did not review operators' source documents in 38 of those audits; 68 had incomplete working papers; and 12 had no working papers whatsoever. Or to put it another way, in 44 percent of the cases examined auditors relied entirely on the operator's word regarding production in 15 percent of the cases.

In 15 percent of the cases there was no paper to support the auditor's findings if challenged by the operators, and in 82 percent of the cases the auditor may have difficulty supporting the finding if challenged.

Now, let's look at page 43 of your 1981 report, which presents summary results again. Of 175 audits reviewed, 59 percent had inadequate or no working papers, and there are numerous instances in which the auditors failed to review appropriate source documents. In 1981, you recommended that written procedures be established to provide for documentation of audit findings, preparing work papers and for verifying coal production through the appropriate source documents.

Such procedures were adopted. Yet, in looking at the results on page 20 of the 1985 audit, it would appear that these procedures are frequently not followed. My question to you is: Is the lesson to be learned from all of this is that it doesn't do much good to have written procedures unless they are being followed?

Mr. **Beuley**. That is true.

Mr. **Synar**. OK. Now, the scope of the 1985 inspector general's audit provides no basis to determine the extent of underreporting or lack of reporting. However, is it fair to say that because your review identified serious auditing problems no one can dismiss the possibility that substantial amounts of coal production are undetected?

Mr. **Beuley**. I can't quantify what substantial is. We have identified unreported fees of about $250,000 and the potential of another $900,000. That is all we can talk about as far as what we reviewed. Now how much more is out there I have no way of——

Mr. **Synar**. But you had a real small review of audits, did you not, so you really wouldn't be able to tell how bad it is?

Mr. **Beuley**. No. Basically we were looking at a systemic problem of the procedures, whether they are being followed and how they are processing it. The problems seem to be following the procedures, the training, quality assurance to make sure that procedures are being followed, and to some extent getting information from other Federal agencies to identify unreported fees.

Mr. **Synar**. In your 1985 report, Mr. Beuley, you indicate that although you identify problems in the administration of the contract for collecting delinquent fees, the review was dropped after the contract expired. Why was that?

Mr. **Beuley**. Well, basically they expired during our review, so we felt that we would not review it since it was not going to be an ongoing contract.

Mr. **Synar**. OSM's statement today indicates that there will be similar contracts in the future. What kind of problems did you identify with these contracts?

Mr. **Beuley**. We—Andy, have you identified any?

Mr. **Fedak**. We did not identify any specific problems because we did not get into the contract itself. We had some concerns, though, and one of the concerns was whether or not it was a cost effective way to collect a debt.

Our concern would be if it took the contractor one telephone call to collect a $100,000 delinquent fee and he collects a commission of $15,000-$20,000. It may be more cost effective to do the collections in-house. As we said, we did not review the contract, and we did not know what the level of effort was on the part of the contractor in collecting the debts.

Mr. **Synar**. Well, I guess the question from here is OSM now proposes to spend $233,000 for fiscal year 1986 to contract with outside accountants for audits. Based upon your experience in auditing and reviewing contract administration, what potential problems do you see with such a proposal?

Mr. **Beuley**. Well, the proposal itself is not a problem. We would have to look at how they are going to implement it. The procedures will have to be detailed enough to assure that the CPA's would cover the procedures OSM wants covered.

There has to be adequate oversight by the OSM staff to make sure (1) the CPA's are following the procedures; (2) policy issues are resolved early in the game; and (3) the quality of work is adequate. If that was properly laid out and followed through, I don't see a major problem with CPA's doing some of the fee compliance auditing.

Mr. **Synar**. Thank you, Mr. Beuley.

Mr. Armey.

Mr. **Armey**. Thank you.

Mr. Beuley, you indicated that 17 of the 21 recommendations you made to OSM are resolved?

Mr. **Beuley**. Resolved means that we have either received documentation showing that recommendations were implemented or an adequate action plan with their milestones that they are going to correct the problems. The Assistant Secretary for Policy, Budget and Administration is the Department followup official, and his office will track the recommendations until they are implemented. We plan to make a followup review in fiscal year 1986, to determine exactly what happened with these recommendations.

Mr. **Armey**. Well, a plan has been drafted to be implemented. That always worries me a little bit, because I have drafted plans to be implemented with the clear understanding that once somebody got the plan they would quit bothering me and I could go about other work that I considered more important.

Are you satisfied with the promptness of the response and the commitment to carry out the plan?

Mr. **Beuley**. I can't guarantee that anybody is actually going to do what they say they are going to do. All we can do is go back and followup to see if they did. The only thing I can say is based on their comments to us and the briefing we had with the new Director of OSM he appears to be committed to correcting those problems. We will go back and take a look to see if the problems were corrected.

Everybody promises auditors everything and you have to go back and check every once in a while to make sure it is happening. But it is a management responsibility.

Mr. **Armey**. Well, you know we had that principle, too, with respect to auditors, where we sort of promised them everything but give them nothing.

The practice of contracting out collections is another one, and I wonder sometimes if that is not resorted to as kind of a quick fix when indeed the agency itself might be able to make a lot of these collections thereby saving those extra fees.

Are you satisfied the agency is in a position that makes it necessary to resort to this external collection procedure?

Mr. **Fedak**. I am not sure it is necessary to do it. We had concerns when we first started the audit that maybe it was not the most cost effective way to collect the fees. Later on OSM decided that they would handle the collectors in-house. Maybe some analysis should be made as to exactly what level of effort is needed to collect some of these fees, and maybe some of that can be done inhouse and some of it contracted out.

Mr. **Armey**. Let me ask you one other thing. This is a judgmental call on your part because I am trying to understand your impression of the effectiveness of this and other agencies of the Government.

Would you be willing to rank this agency in regard to these kinds of collections on a scale of 1 to 10 as compared with others?

Mr. **Beuley**. I am not prepared to do that.

Mr. **Armey**. All right. Well, I don't want to put you in a situation of having to do something that might be unfair. I am trying to get a grasp on how serious the problem is. Thank you for your statement.

Mr. Chairman.

Mr. **Synar**. Any further questions?

Mr. **Armey**. No. Thank you.

Mr. **Synar**. Let me thank all three of you again for coming this morning. I think that you have done an excellent job over the period of years and have really laid the groundwork for what this hearing is all about today. We thank you very much.

Our next panel of witnesses will be James S. Lyon, director, Citizens Mining Project, Environmental Policy Institute, and Mr. Tim Murphy, Southern Appalachian Leadership Training Program.

Gentlemen, you are aware of the committee rules. We swear all witnesses in. Do either one of you have objection to being sworn in?

[Witnesses sworn.]

Mr. SYNAR. Thank you very much.

Again, both of your statements will be made a part of the record in their entirety. At this time we would ask you to summarize.

And, Mr. Lyon, we will start with you.

## STATEMENT OF JAMES S. LYON, DIRECTOR, CITIZENS MINING PROJECT, ENVIRONMENTAL POLICY INSTITUTE

Mr. LYON. I would be happy to, sir, and it will take me about 5 minutes.

I am James S. Lyon, director of the Citizens Mining Project of the Environmental Policy Institute.

In the 1970's, EPI led the fight in Washington for passage of the Federal Surface Mine Control and Reclamation Act and, in 1977, established a Citizens Mining Project to monitor the Office of Surface Mining and State compliance with the law.

I commend the chairman and the subcommittee for holding this oversight hearing into OSM's problems and failures in the AML fee compliance, and I appreciate the invitation to testify today.

EPI has been concerned about this issue since 1981 when we began receiving reports from the coal fields that, first, OSM's fee auditing program was extremely inadequate and is allowing outstanding fees to go undetected by OSM in substantial proportions; second, OSM is collecting little of the approximately $30 million in outstanding fees that it detected even under its inadequate auditing program; third, OSM has failed to take alternative enforcement action against known delinquent operations; and fourth, failure in both of these areas in poor auditing and collection, is presenting operators who have historically reported and paid their fees with an incentive to evade compliance in the future.

These reported concerns were confirmed to us in 1982 when we received a series of internal memos prepared by a former Solicitor's Office attorney. These memos noted meetings with various OSM fee compliance officers and representatives of the IG's Office. The memos recounted—and this is under attachment No. 1—recounted the FCO's estimation that only 60 percent of the coal operators filed a required reclamation fee report, thus indicating massive evasion of payments into the AML fund.

The FCO's also noted that the operators who bothered to file reports often underreported what they owed. They concluded that the operators were evading payments "because even if they are caught nothing happens."

OSM repeatedly responded to our concerns in these memos with outright denial that any problem in fee compliance existed. While we have yet to discuss the issue with Mr. Christensen, every OSM Director since 1981 has denied any problems in this area. Some Directors even went further in congressional hearings, often boasting of their alleged record. For instance, Mr. Harris, in 1983: "With respect to these AML fees, we are probably the most successful agency in the Government in collecting taxes due the Government," and Mr. Reed's quote in 1984 before the subcommittee, which you have already noted.

Discounting these denials we called for evidence supporting the Directors' boastful claims. We repeatedly asked for information such as departmental program evaluations, fee compliance statistics, and documentation of outstanding delinquent operators. OSM responded by denying us regular access to such information by requiring us to file Freedom of Information Act requests for the most basic data. OSM also refused to grant search fee waivers historically granted to citizen interest groups under the law.

For example, in June 1983, I requested a computer printout maintained by OSM that listed specific coal companies who by OSM's account were delinquent in AML fee payments and the amount each company owed, but was forced to file a formal FOIA request. While they could not deny me the information, OSM denied my request for a waiver of search fees and assessed me processing costs for this document based on rates of $500 an hour for computer search time despite that all that was needed was to simply Xerox a copy of the document already in the office. The intent was very clear to us. OSM intended to price this information beyond the means of the public. I appealed the fee waiver decision and eventually was granted the waiver, and thus the document, July 31, 1984. However, the whole process took over 13 months.

One ultimately has to ask, what was OSM trying to hide? The answer is simple: the document revealed the location of operators from whom OSM has failed to collect over $30 million in delinquent fees, some since 1978, and noted that many of these operators continue to mine today.

We repeatedly asked for other specific statistical data and policy justifications such as the exact number of companies annually audited by OSM, the average or total unreported dollars uncovered by each FCO, and reasons for having only 30 FCO's as well as their placement in the field, and so on. Regarding these questions OSM did not have to resort to suppressing documents as before, for it became apparent from their latest response found in attachment 3 that OSM has kept little, if any, statistics regarding its fee compliance program; and, furthermore, has never formally evaluated it on any meaningful level.

Faced with this reality, we conducted our own interviews in the field with various current and former OSM fee compliance personnel. Based on these discussions and various documents we have prepared a list, found as attachment 4, which briefly outlines the problems in the fee compliance area as we see it.

Based on these problems, we would like to present the subcommittee with some recommendations for resolution.

First, OSM needs more fee compliance officers in the field. Under the present conditions it may be appropriate to triple the number to approximately 90.

Second, FCO qualifications and training need to be upgraded substantially.

Third, the placement of FCO's in the field needs to be reorganized so as to place the auditors closer to the companies in order to cut down on excessive travel time and increase audit production.

Fourth, OSM must be required to prepare an annual evaluation report of its fee compliance program which contains statistical data.

Fifth, the OSM Financial Center must be moved from Denver to Washington to improve management coordination and effectiveness.

Sixth, and we think this one is very important. OSM inspectors should immediately conduct inspections of all operations it has listed as delinquent and cite each operator with a notice of violation unless other payment plans have been approved previously. Alternate enforcement provides a better opportunity than litigation for fee recovery if thoroughly enforced.

Seventh, in designing and developing its computer system for tracking operators and violations, it is essential that AML fee compliance data play a major role.

Eighth, OSM must institute a uniform policy to ensure permit denials to delinquent operators.

Ninth, the OSM leadership must make a real effort to resolve management conflicts between the title V staff and title IV staff.

In conclusion, Mr. Chairman, while it is alarming that this is just one more area where OSM has failed in its responsibilities, the ramifications as we see it are much greater. You are about to hear testimony from Mr. Murphy, representing citizens in Appalachia, who continue to be impacted by the problems associated with abandoned mine sites. Many of these sites have serious water quality problems but are not being reclaimed by the AML fund. OSM has taken the position that it must be very selective about which sites receive funding due to the limited dollars of the fund.

And we agree there will never be enough money in the fund's projected lifetime to reclaim all the mines prior to 1977. However, it is nothing short of outrageous that OSM refuses to fund projects based on AML shortages while it runs a fee compliance program that fails to collect over $30 million in known delinquent fees and fails to properly audit actively mining operators who willfully evade payment of millions more. A few AML dollars can go a long way in helping a coal field community solve some of its mining problems.

Thank you.

Mr. SYNAR. Thank you very much, Mr. Lyon.

[The prepared statement of Mr. Lyon follows:]

ENVIRONMENTAL POLICY INSTITUTE

# WRITTEN TESTIMONY
OF
JAMES S. LYON
DIRECTOR
CITIZENS MINING PROJECT

BEFORE THE
HOUSE GOVERNMENT OPERATIONS COMMITTEE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES

11 JULY 1985

Thank you Mr. Chairman, I am James S. Lyon, Director of the Citizens Mining Project for the Environmental Policy Institute (EPI). EPI is a non-profit, tax-deductable, public interest research and lobbying organization. We are dedicated to working toward sound energy policy and representing citizen concerns regarding the impacts of energy, water, and agricultural development. In the 1970's, EPI led the fight in Washington for the passage of the federal Surface Mining Control and Reclamation Act (SMCRA). After Congress passed this landmark legislation in 1977, EPI established the Citizens Mining Project to monitor the Office of Surface Mining (OSM) and the states' compliance with the law. In addition, the Project assists coalfield citizens to better understand and exercise their rights under this Act.

I commend the Chairman and the Subcommittee for holding this oversight hearing into OSM's problems and failures to properly audit and collect outstanding fees obligated to SMCRA's Abandoned Mine Land Fund (AML). And I appreciate the invitation and opportunity to testify today.

EPI has been concerned about this issue since 1981 when we began receiving reports from the coalfields that:

1. OSM's fee auditing program was extremely inadequate and is allowing outstanding fees to go undetected by OSM in substantial proportions.

2. OSM is collecting little of the approximately $30 million in outstanding fees that it detected even under its inadequate auditing program.

3. OSM has failed to take alternative enforcement actions against delinquent operators under Section 521 and 510(c) of SMCRA which would ultimately alleviate the litigation expense and backlog at the Solicitor's office.

4. Failures in both of these areas, poor auditing and collection, present operators who have historically reported and paid their fees with an incentive to evade compliance.

These reported concerns were confirmed in 1982 when EPI received a series of internal memos (attachment 1) prepared by former Solicitors Office staff attorney, Vincent Laubach. These memos noted several meetings Mr. Laubach had with various OSM Fee

Compliance Officers (FCO's) and reprentatives of the Inspector General's Office. The memos recounted the FCO's estimation that only 60% of the coal operators file a required reclamation fee report thus indicating massive evasion of payments into the AML fund. The FCO's also noted that operators who bothered to file reports often underreported what they owed. They concluded that operators are evading payments "because even if they are caught nothing happens".

OSM repeatedly responded to our concerns and these memos with outright denial that any problem in fee compliance existed. In fact, every OSM Director since 1981 has denied any problems in this area. We have yet to hear from Mr. Christensen on this issue. Some Directors went even further in Congressional hearings often boasting of their alledged record. For example:

> "With respect to these AML fees, we are probably the most successful agency in the Government in collecting taxes due the Government. According to our figures we collect about 98% of the amount due from the mining companies. ... I think it reflects well on the agency." (Remarks of OSM Director James R. Harris, Hearing before House Appropriations Subcommittee on Interior, May 4, 1983, pg. 105.)

> "At present we are collecting more than 98% of known debt. ...One of the concerns OSM has had is whether there is any significant amount of unknown debt, i.e., whether there is a significant amount of unreported or underreported debt. Thus far, we have been unable to establish that there is any significant amount of debt that falls in this category." (Testimony of OSM

Director Lisle Reed, Hearing before House Government Operations Subcommittee on Environment, Energy, and Natural Resources, June 13, 1984, pg.69-70.)

"According to our best estimates and the best estimates of those who are acquainted with the production levels in the country, we are collecting about 98.2% of what is due the govenment by voluntary payment by the industry. I think that speaks very well of the industry when you look at the IRS, who by their own figures, I think collect about 86 percent..." (Remarks of OSM Director James R. Harris, Hearing before House Interior Subcommittee on Energy and the Environment, February 27, 1984, pg. 21.)

"We have brought the collection rate up to in excess of 98% of the fees owed to OSM which is the best collection rate of any Agency in the Government now." (Remarks of OSM Director, James R. Harris, Hearing before the House Appropriations Subcommitee on Interior, May 18, 1982, pg. 1245.)

Problems in this area were brought before OSM's various Directors time and time again. The Agency cannot claim today that it was unaware of these problems until recently.

Discounting these denials we called for evidence supporting the Directors' boastful claims. We repeatedly asked for information such as departmental program evaluations, fee compliance statistics, and documentation on outstanding delinquent operators. OSM responded by denying us regular access to such information by requiring us to file Freedom of Information Requests (FOIA) for the most basic data. When such information could not be legally withheld under the law, OSM refused to grant search fee waivers which historically are provided citizen interest groups under 43 CFR 2.17.

A specific illustration (attachment 3) regards an article that I read on May 12, 1983, in the Coalfield Progress, a newspaper published in southwest Virginia, describing a computer printout maintained by OSM that listed specific coal companies who OSM knew were delinquent in AML fee payments, how much each company owed, how long each owed, and whether or not the mine was presently active or inactive. In June 1983, I requested the printout from OSM, but was forced to file a formal FOIA request. While they could not deny me the information, OSM denied my request for a waiver of search fees. OSM assessed me processing costs for this document based on rates of $500 an hour for computer search time despite that all that was needed was to simply xerox a copy already printed. The intent was very clear to us. OSM intended to price this information beyond the means of the public. I appealed the fee waiver decision and eventually was granted the waiver and thus the document July 31, 1984. However, this whole process took over 13 months.

One ultimately has to ask, what was OSM trying to hide? The answer is simple, -- the document revealed the location of operators from whom OSM has failed to collect over $30 million in delinquent fees (some owing since 1978), and noted that many of these operators continue to mine today.

Regarding other documentation, we repeatedly asked for specific statistical data and policy justifications such as:

1. The exact number of companies annually audited by OSM;
2. The average number of companies found by a Fee Compliance Officer (FCO) to be underreporting, or not reporting at all;
3. The average or total underreported dollars uncovered by FCO's;
4. The policy governing how FCO's determine which companies to audit and which not to audit;
5. The reasoning behind having only 30 FCO's as a permanent staffing level;
6. The reasons for the placement and location of FCO's in the field;
7. The hiring qualifications of an FCO;
8. A comprehensive training program for FCO's;
9. Statistics regularly received by Title IV staff in Washington from FCO's in the field;
10. What percentage of the FCO's working time is spent doing audits versus traveling to an audit; and
11. Any program evaluations prepared by OSM regarding fee compliance and collection.

Regarding these questions, OSM did not have to resort to suppression of documents for we soon came to the conclusion that OSM has kept little, if any, statistics regarding the quality, quantity, or results of fee audits, and furthermore, has never formally evaluated its fee compliance program on any meaningful level. (Attachment 3)

Faced with this reality, we conducted our own interviews in the field with various OSM Fee Compliance Officers, and their supervisors, as well as with former OSM fee compliance personnel. Based on these discussions, various other documents, and our experiences with OSM headquarters, we have prepared an attached list which briefly outlines problems in the fee compliance area as we see it. (Attachment 4)

Based on these problems, I would like to present to the Subcommittee some recommendations for resolution:

1. OSM needs more Fee Compliance Officers in the field. Under present conditions, it may be appropriate to triple the number to approximately 90.

2. FCO qualification and training needs to be upgraded substantially for proficiency and uniformity.

3. The placement of FCO's in the field needs to be reorganized so as to place the auditors closer to the companies in order to cut down on excessive travel time and increase audit production.

4. OSM must be required to prepare an annual evaluation report of its fee compliance program. Such an evaluation must contain pertinent statistical data such the number of audits performed; the amount of under and unreported fees detected; amount of delinquent fees collected; amount remaining outstanding; number of alternative enforcement actions taken; etc.

5. The OSM Financial Center must be moved from Denver to Washington to improve the management, communication, cooperation, and effectiveness of this program.

6. OSM inspectors should immediately conduct inspections of all operations it has listed as delinquent and cite each operator with a Notice of Violation unless the operator is already involved in litigation or has established an adequate payment plan with OSM. Such alternative enforcement is less costly and more timely than entering into litigation, and provides a better opportunity for fee recovery if thoroughly enforced.

7. In designing and developing its computer system for tracking operators and violations, it is essential that AML fee compliance data be regularly entered in a comprehensive and uniform manner.

8. OSM must institute a uniform policy of ensuring new permit denial to delinquent operators. At a minimum, OSM field offices and state regulatory authorities should automatically receive OSM's most revised computer delinquent list regularly. Furthermore when approving new permits, states should be required to check off that the permittee was current in fee payment.

9. The OSM leadership must make a real effort to resolve management problems and conflicts between the Title V staff and Title IV staff so as to work as a team rather than as separate offices.

While it is alarming that this is just one more area where OSM has failed in its responsibilites, the ramifications are much greater. Soon you will hear testimony from Mr. Murphy representing citizens in Appalachia who continue to be impacted by the problems associated with abandoned mine sites. Many of these sites have serious water quality problems but are not being reclaimed by the AML fund. OSM has taken the position that it must be very selective about which sites receive funding due to the limited dollars in the AML fund.

We agree with OSM that there will never be enough money in the projected lifetime of the AML fund to reclaim all of the mines left abandoned prior to 1977. However it is nothing short of outrageous that OSM refuses to fund projects based on AML fund shortages while it runs a fee compliance program that fails to collect over $30 million in known delinquent fees, and fails to properly audit actively mining operators who willfully evade payment of millions more. A few AML dollars can go a long way in helping a coalfield community solve some of its mine problems.

Thank you for this opportunity to testify.

ENVIRONMENTAL POLICY INSTITUTE

ATTACHMENTS TO TESTIMONY

Attachment 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

V's

NOV 2 1981

**MEMORANDUM OF INTERVIEW held on October 13, 1981**

**TO:** File

**FROM:** Vincent A. Laubach, Staff Attorney, DSM VAL 11/2/81

**PRESENT:** Bill Kneisley, Andy Chambers, AML Fee Compliance Officers; Vincent Laubach; Bob More, FSO, for introductions

Mr. Kneisley and Mr. Chambers indicated that cases involving the failure to file and the failure to pay reclamation fees were a very serious problem. They felt that many operators don't file because even if they are caught nothing happens - the worst thing that could happen is that they would have to pay only what they would have had to have paid had they filed and paid on time - plus 1% interest per month.

So far this year they discovered 126 firms which failed to file in three Kentucky counties alone. The tax or fee due on these cases is over $500,000. They felt that if they had more investigators much more of this fraudulent activity could be found. They have only five investigators for 6,500 identified mines in Region II, plus an estimated 2,000 wildcat mines. Wildcat mines, they said, almost never file or pay reclamation fees.

They estimate that only 60% of the operators required to file reclamation fee reports actually do so. They felt that much could be done if they had more fee compliance officers. For example, they could work more closely with state tax collectors who collected identical state fees or taxes, and do computer matchups, etc., to identify those who fail to file. By way of illustration, they told me that they had just discovered one operator who didn't file for two years even though he had a fee liability of over $100,000. This operator also was engaged in surface mining without a permit. They told me of another operator who under reported over several quarters to the tune of $236,000. They felt that this sort of activity is criminal fraud, but that cases such as this are not filed in U. S. court until about two years after the unlawful activity is discovered.

They do not follow their cases once they go to the Solicitor's office. They do know that very little is collected by the actions of the Solicitor's office due to the acute shortage of attorneys.

They felt that their office should have several criminal fraud investigators who specialize in serious fraud cases.

cc: Associate Solicitor, DSM
Assistant Solicitor, L & E
[illegible]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON D C 20240

V's

MEMORANDUM OF INTERVIEW

TO: File

VAL FROM: Vincent A. Laubach

DATE: October 5, 1981

PRESENT: Leon Snead, Auditor, Office of Inspector General
Vincent Laubach, Staff Attorney, DSM

Mr. Snead and I reviewed his findings. He said that additional collection and accounting data will be prepared and forwarded to us.

He said he could find no meaningful statistics as to the total number of cases and amounts of monies due, etc. in the reclamation fee and penalty cases. He did get a sample of potential recoveries and said he would send me a photo copy of those statistics.

He agreed that our office should keep statistics on each case referred to the solicitor's office and/or DOJ for legal action. This data should be updated weekly or monthly. He said at present he can only guess as to the number of cases and total amounts done. He said a full review could possibly reveal up to $100,000,000 due the government in these collection cases.

He felt that the greatest problem we face in bringing the cases current was the poor morale of the staff in the Title IV fee compliance and the Title V Assessments Office. He said the these people are less than enthusiastic about pursuing recoveries due to the uncertainly of their present position.

He strongly felt that at least 6 more attorneys devoted solely to collection were desperately needed by our office. He felt that the I.G. Reports should be given to OMB to support our and his office's contention that additional funds to collect would be very cost productive.

cc: Field Solicitors

I was the only one to keep [illegible] statistics. They ordered me to stop

Environmental Policy Institute
317 Pennsylvania Ave. S.E. Washington, D.C 20003
202/544-2600

July 15, 1983

Bernadine D. Thompson, Chief
Regulatory and Issues Management
Office of Surface Mining
1951 Constitution Ave. N.W.
Washington, DC 22240

RE: Requests Under the Freedom of Information Act

Dear Ms. Thompson:

In accordance with the Freedom of Information Act and 43 CFR 2.14, and 2.17(c), this letter requests a copy of each of the last four quarterly reports which list coal operators who are delinquent in payment of reclamation fees and the amount owed by each of the debtors. The Environmental Policy Institute (EPI) requests a waiver of document search and duplication costs incurred in responding to this request. EPI is a non-profit, tax-exempt organization. EPI's lobbying project, the Environmental Policy Center (EPC) led the fight to secure passage of the Surface Mining Control and Reclamation Act, and together, EPI and EPC have served as a citizens watchdog over OSM activities since its establishment in 1977. EPI works closely with local citizens and citizen organizations around the country, especially in the major coal producing states and routinely provides those persons with information on surface mining actions that may impact them. In addition, EPI's Citizens Mining Project provides legal and practical advice to citizens interested in exercising their rights under state and federal law.

In addition to making this request, I would like to make the following comments. You are correct in your letter dated June 20, 1983 (attached) that I did request by phone a copy of the forementioned report. It is incorrect that I agreed to pay for search and duplication of the documents. When told that such a request must be made through FOIA and that fees would be incurred, I merely asked over the phone why a formal request was necessary and what are the costs involved.

We have answered the questions relating to the Department of Justice FOIA guidelines in a letter to Director James Harris dated April 20 1983. Again it is our view that this request constitutes an unwarranted and unlawful use of the Freedom of Information Act's fee waiver provisions. Requests relating to the value of this information to the public, the public's interest in the information should be obvious to your office as it is to our own. All of the information which we request from the Office of Surface Mining is for the purpose of overseeing the implementation and enforcement of the Surface Mining Control and Reclamation Act. Furthermore EPI has been involved in surface mining issues for many years, frequently testifying before Congress throughout the year, meeting with OSM officials, preparing and submitting numerous comments on behalf of citizens across the nation, and representing coal field citizens in numerous administrative and judicial proceedings. Equally obvious is the fact that EPI has no individual or personal interest in this information. We have repeatedly stated, that EPI is a non-profit, tax-exempt organization committed to promoting public involvement in understanding the Surface Mining Act and rights available to citizens under the law.

Therefore the information requested by OSM as stated in the Department of Justice guidelines is an unnecessary, and unwarranted harassment of our organization. EPI, its work, and purpose, are well known to OSM. Furthermore, it is our understanding that the Department of Justice policy are not federal regulations, but rather guidelines upon which to base fee waiver determinations. Therefore, it should not be necessary to continue to ask the same questions to an organization whose existence and purpose is well known to you. Hopefully in the future, delays in responding to FOIA requests will not be experienced due to this bureaucratic hinderence.

We look forward to receiving this information within the time period prescribed by law. Thank you for your time and effort.

Respectfully,

James S. Lyon, Assistant Director
Citizens Mining Project

cc: Senator Patrick J. Leahy
Congressman Jim Moody

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

Rec'd 8/21
[illegible]
JMS

AUG 17 1983

Mr. James L. Lyon
Environmental Policy Institute
317 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Dear Mr. Lyon:

I have received your July 15, 1983, Freedom of Information Act (FOIA) request for copies of each of the last four quarterly reports listing coal operators who are delinquent in payment of reclamation fees. In my June 20, 1983, letter I informed you that the estimated cost of the information would be $134.36. I also informed you that you may be granted a waiver of the fee if you qualify under the Department of Justice guidelines for fee waivers which were included in the letter. As you are aware, we have adopted those guidelines as our policy for granting fee waivers.

I am aware, as you point out in your July 15 letter, that the Environmental Policy Institute is a non-profit, tax-exempt organization in the public interest. However, the nature of the requester is not the only point of importance when considering a waiver. The benefit to the general public and the cost to the public are the considerations. See Burriss v. Central Intelligence Agency, 524 F. Supp. 448, 449 (M. D. Tenn. 1981). This balancing test was explained to you in my letter of March 29.

We do not have the information you requested in quarterly report form, but we are prepared to provide you with the most current information.

The actual cost of providing this information is:

| | | |
|---|---|---|
| Search (Computer time)- | | |
| Processing Time | 00:06:82 @ $500 an hour = | $ 56.83 |
| Input/Output Time | 00:37:45 @ $250 an hour = | 156.00 |
| Professional monitoring | 0:50 hours @ $12 an hour = | 6.00 |
| Reproduction | 408 pages @ $0.10 per page = | 40.80 |
| Package, handling, shipping: misc. | | 23.72 |
| Total | | $283.35 |

Your request does not contain sufficient information to justify that the benefits to the public outweigh the costs to the public. Therefore, I am denying your request for a fee waiver.

You may appeal the denial of your fee waiver to the Assistant Secretary of the Interior for Policy, Budget and Administration under 43 CFR 2.17 by writing to: Freedom of Information Act Officer, Office of the Assistant Secretary Policy, Budget and Administration, U.S Department of the Interior, Washington, D.C. 20240. Your appeal must be requested within 20 days (Saturdays, Sundays, and public legal holidays excepted) of your receipt of this letter. Your appeal must be accompanied by copies of the original request and this initial denial. The appeal should be marked both on the envelope and on the face of the appeal letter, with the legend FREEDOM OF INFORMATION APPEAL. In order to expedite the appellate process and insure full consideration of your appeal, your letter should contain a brief statement of the reasons why you believe this initial decision to be in error.

The officials responsible for the denial of your fee waiver are James R. Harris, Director, Office of Surface Mining, Bernadine Thompson, Chief, Regulatory and Issues Management Office, Office of Surface Mining, Edward Bonekemper, Assistant Solicitor, Branch of Governmental Relations, Division of Surface Mining; and Patricia McHugh, Staff Attorney, Branch of Governmental Relations, Division of Surface Mining.

Upon receipt of a check for $283.35, we will provide you with the information described above.

Sincerely,

ACTING Chief, Regulatory and Issues
Management Office

**Environmental Policy Institute**
317 Pennsylvania Ave. S.E. Washington, D.C. 20003
202/544-2600

September 19, 1983

Freedom of Information Act Officer
Office of the Assistant Secretary for
Policy, Budget, and Administration
U.S. Department of the Interior
Washington, DC 20240

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Sir/Madam:

In accordance with 43 CFR 2.17, this letter appeals the decision of the Office of Surface Mining (OSM) dated August 17, 1983, and received on August 24, 1983 denying the Environmental Policy Institute's (EPI) request for a fee waiver to our Freedom of Information Act (FOIA) request of July 15, 1983. EPI had requested copies of the last four quarterly reports listing coal mining operators who are delinquent in payment of abandoned mine land (AML) fund reclamation fees. OSM, in its August 17th letter, justified its fee waiver denial by stating that our request "does not contain sufficient information to justify that the benefits to the public outweigh the costs to the public.", as outlined in the Department of Justice's new fee waiver guidelines. EPI hereby appeals OSM's refusal to waive fees in the amount of $283.35 for the processing of that request.

EPI remains extremely concerned with OSM's application of these guidelines. It is our view that OSM has used these guidelines as a tool to withhold and/or delay the release of public information and documents to citizens. Furthermore, we believe OSM's use of these guidelines to be an unwarranted harassment of our organization. The manner in which these guidelines have been used in regards to EPI's FOIA requests has produced unneccessary bureaucratic delays, and has been a financial waste to the nation's taxpayers.

EPI is a non-profit, tax-deductable, public interest organization. EPI's Citizens Mining Project is dedicated to the oversight of the implementation and enforcement of the Surface Mining Control and Reclamation Act of 1977, as Congress intended. EPI's lobbying project, the Environmental Policy Center, worked for years to ensure the Act's passage. EPI has worked closely with the Office of Surface Mining, since its creation, on every aspect of federal coal policy. Moveover, EPI's knowledge and ability to disseminate information effectively to the public should be obvious to OSM. EPI regularly communicates with hundreds of citizens and organizations regarding surface mining issues. We have submitted hundreds of comments addressing a host of administration policies and actions, on our own behalf and on the behalf of citizens around the country. Furthermore, we have extensively represented citizens in administrative and judicial proceedings. In addition, we have met with OSM officials, over the years, on a variety of coal policy issues, and regularly testified before Congress regarding our work. EPI has never demonstrated any "personal" interest in obtaining any information from OSM other than to use it in promoting public involvement in understanding and overseeing the Surface Mining Act and the rights available to citizens under that Act. Moreover, EPI has established a considerable history of sucessfully qualifying for fee waivers in the past, both prior to, and under these guidelines. Therefore, the continued use of the guidelines for each FOIA request from EPI to determine its public value, and ability to disseminate the information is redundant, unnecessary, and only serves to make it more difficult for the public to obtain information to which they are plainly entitled.

Furthermore, EPI views these guidelines to be an internal policy of the Administration for which the public has not been afforded the opportunity to review and submit comments. OSM is applying these guidelines to the public as if they were federal regulations with statutory requirements. If the public must be subjected to this policy in a regulatory manner, the public should also be granted the right of a public comment period, public hearings, and other inherent legal rights and protections that formal rulemaking procedures of the Administrative Procedure Act guarantees (5 U.S.C. 553).

In regards to the fees assessed to this specific case, we are extremely disturbed by the exorbitant rates proposed by OSM. Charging in the range of $250 - $500 per hour in search time, is an outrageous attempt to price information out of the reach of the general public. Setting search fees at such a stratospheric rate will deter members of the public, with limited financial resources, from continuing an information request. Such actions fly in the face of Congressional intent that fees "not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." S. Rep. No. 1200, 93rd Cong., 2d Sess. (1974); see also Long v. IRS, 596 F.2d 362, 367 (9th Cir. 1979). Moreover, we fail to see why such an expensive computer search is necessary for the Agency to comply with this request when the documents in question have already been, and continue to be printed out by the computer for internal OSM staff use (see attached news article). It seems obvious from that article, that someone within OSM regularly uses these documents. It would then seem logical that the most efficient, and inexpensive manner to fill our request would be to have simply duplicated the documents, and assessed only charges for reproduction, shipping, and handling. Hence, it appears that OSM is using exorbitant and unnecessary search fees as a means to discourage citizens from requesting and obtaining public information.

For purposes of this appeal, and in attempts to clarify our case for requesting a fee waiver, our answers to the specific five guideline questions are outlined below.

a. The public has an interest and right to know which coal mine operators have failed to meet their legally mandated responsibility to pay reclamation fees. Hundreds of thousands of abused acres continue to threaten the public's health and safety. The AML fund's life is limited to 10 more years, and OSM has often admitted that the fund's potential will never be large enough to reclaim all of the nation's abandoned sites. It is therefore paramount that this program be implemented in a manner that will ensure the reclamation of as much of these abandoned lands as possible before the fund expires, and that the fund not be cheated out of essential fees necessary to accomplish this goal.

b. The public intends to oversee that OSM properly collect these overdue funds from delinquent operators.

c. Not to our knowledge.

d. The answer to this question has already been cited in the body of this letter, and in a. In addition, as OSM knows from its long experience in dealing with our organization, EPI is in regular contact with hundreds of citizens organizations, land owners, farmers, and ranchers, from around the country. EPI disseminates coal policy information, including federal register notices and OSM press releases, and advises the public of their ramifications. EPI offers this service to the public free.

e. Due to the nature of the organization and its non-profit status, EPI cannot possibly have any personal interest in this information. The sole purpose in making this request was to obtain the information for the benefit of the general public.

It is our hope that this information is adequate for your needs. In addition, all relevant coorespondance, and documents needed to assist you in your review have been enclosed. I look forward to receiving your decision within the time frame prescribed by law. If additional information, or clarification is necessary, please do not hesitate to call.

Respectfully,

James S Lyon

James S. Lyon
Assistant Director
Citizens Mining Project

Enclosures

cc: Senator James McClure
Senator Patrick Leahy
Senator John Warner
Congressman Morris Udall
Congressman Jim Moody
Congressman John Seiberling

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 31 1984

Mr. James S. Lyon
Environmental Policy Institute
218 D Street, S.E.
Washington, D.C. 20003

Dear Mr. Lyon:

This concerns your Freedom of Information Act appeal dated September 19, 1983 (FOIA 83-81). The appeal pertains to the denial by the Office of Surface Mining of your fee waiver request for producing records concerning delinquent payments of reclamation fees. In our letter to you dated February 10, 1984, we advised you that work on your appeal was nearing completion and that you would be receiving a decision shortly thereafter.

We have learned that in a letter to you dated March 5, 1984, the Office of Surface Mining granted your fee waiver request. Therefore, we are notifying you that the appeal file is being closed out. We apologize for this late formal response to your appeal, but a mix-up in communications caused a delay in the preparation of this letter.

Sincerely,

David R. DeAngelis
David R. DeAngelis
Freedom of Information
Appeals Officer

# OSM asks state to deny permits

5/12/83

By JENAY TATE
Coalfield Progress Staff Writer

The U.S. Office of Surface Mining has asked the state's reclamation agency to deny new mine permits to many Virginia coal operators unless they settle up an estimated $1.8 million total debt OSM says the companies owe to the Abandoned Mine Land reclamation fund.

The State of Virginia, however, contends that federal bill collecting is not its responsibility and that it is not empowered to deny operators their mine permits because they have not paid their AML fees.

Moreover, the coal industry balks at the $1.8 million sum, charging that it is exaggerated when considered in light of bankruptcies and on-going regulatory and legal arguments among operators, Virginia and OSM.

According to a 16-page computerized list compiled by OSM, there were 669 outstanding bills (dating as far back as 1977) on 273 coal mines that had not paid their total abandoned mine land reclamation fees as of December 1982. Delinquent AML fees at that time totalled an estimated $1.5 million and accrued interest came to about $342,000. Accounts ranged from as little as $1.33 to over $200,000.

Because the list is updated regularly to include payments and new delinquent accounts, the total numbers fluctuate. But one OSM official told *The Coalfield Progress* that the amount does not vary much from month to month.

From late 1978 until last year, six mining companies associated in some manner with Paul Turner of Roanoke have accumulated $223,647.96 in delinquent AML fees, according to OSM's list and OSM officials. Turner, who currently is embroiled in a legal battle with Wise County over unpaid county coal severance taxes, also is entangled in court with OSM over the fees. The six companies involved in the debt include: Turner Coal Co., PM&W Coal Co., P.T. Coal Co., Phoenix Coal Co., Bear Branch Coal Co. and Ryder Coal Co.

Turner's lawyer, however, says that his client is related to only one of the six companies. Attorney Doug Wilson of Roanoke said Paul Turner was the president of Turner Coal, a company that has filed for bankruptcy. According to OSM's list, Turner Coal owed $19,249.47 in unpaid fees as of December 1982.

Wilson, who said that his firm represents each of the remaining companies, said he did not know if they owed fees and repeated that

*See OSM, Page 4*

Turner, was not related to those companies.

OSM officials, however, say that Turner is connected in some way to each of the companies.

•Statements given by Turner's accountant, Marion Powell, and documents filed with OSM on behalf of Phoenix and P.T. Coal list Turner as vice president of each company, according to OSM. According to OSM's list, the two companies collectively owe $77,994.91 as of December 1982.

•Powell also listed Turner as president of PM&W, OSM reports. That company, according to the list, owes $42,673.51 as of December 1982.

•A bankruptcy document filed with OSM lists Paul Turner trading as Ryder Coal Co. Ryder owed $21,365.50 as of December 1982, according to the list.

•The vice president of Bear Branch Coal Co. is listed as John Rocovich (who is with Wilson in the law firm that handles Turner's affairs). Turner is listed as the operator of Bear Branch on a Mine Safety and Health Administration form, according to OSM. According to the list, Bear Branch owed $62,384.57 as of December 1982.

Bluston Mining Inc., the list reports, is in arrears to the fund for $158,508 in connection with two mines. The bulk of the money was attributed to a Wise County mine that did not pay its fees for about three years, according to the list. Bluston, whose company president is listed as Rodney Taylor, did not renew its mine license with the Virginia Division of Mines and Quarries in 1981 and has gone out of business, according to a spokesman in Taylor's Roanoke office. Bluston did not file bankruptcy, she said.

AML fees are based on coal tonnage produced and are calculated at 35-cents-per-ton for strip mine operations and 15-cents-per-ton on deep mine sites. The fees, which are to be paid quarterly to OSM, go into a fund earmarked for reclamation of orphaned lands mined prior to the passage of the Surface Mine Control and Reclamation Act of 1977. The federal and state governments theoretically split the total 50-50. (OSM, which has a reported $1 billion in the fund, has come under fire for not making timely disbursements to coal-producing states.)

Non-payment of these fees is a violation of the federal act, OSM says, and constitutes reason to deny permits to mine operators who are delinquent in payments. In all coal-producing states but Virginia, the agencies complied with OSM's request.

After reviewing the state's regulatory program, the Virginia Attorney General's office decided that the Commonwealth does not have authority to deny the permits based on delinquent AML accounts. And it has no plans to amend its program, as was requested by OSM, a state official says.

Leon App, administrative assistant in the Department of Conservation and Economic Development, says that the Interior Department okayed Virginia's program in December 1981 without including such an amendment among its conditions for approval. App noted that OSM included the condition when it approved the programs of other states.

"If they wanted us to do that, they could have added a condition to our program, but they haven't and we have no reason to take any action," App told *The Coalfield Progress* Monday.

"Frankly, I think it was an afterthought with OSM," he said. "When they found they had a problem collecting (the unpaid fees), they decided they would require the states do it instead." App compared the relationship to that between the Internal Revenue Service and the state. "The state Department of Taxation does not do the same for collecting unpaid federal income taxes," he noted.

While Virginia stands to gain half of any fees collected, App notes that many of the companies are out of business. "Fifty percent of nothing is still nothing," he added.

But other states have found the tactic of denying permits to be a successful mechanism in prodding delinquent coal operators to pay up, or at least make arrangements to. In Kentucky, where delinquent fees total about $4.8 million on almost 600 mines, state and federal officials report good response. Officials in West Virginia and Maryland concur.

Most of the states are not denying the permits outright, officials report. Instead, they are either granting a conditional approval or simply withholding a decision until full payment is made or until an agreement for installments is reached. This prevents an operator from having to re-apply and undergo the lengthy review process a second time.

Most officials agreed that their states were empowered to deny the permits or, as one official put it: "You can squirrel it around so that you are."

As OSM sees it, the issue is more one of complying with the federal act in regard to the criteria used in approving permits than a question of who collects the money. Besides, OSM officials say, the state stands to gain 50 cents on every dollar collected.

OSM developed a special task force to collect the fees and overdue fines and contracted with Dun and Bradstreet to assist in the effort.

"We would rather the state assume the leadership role," OSM Deputy Director Steve Griles told *The Coalfield Progress* Monday. Noting that Virginia long has declared its desire to be the leader in enforcement, Griles said this should be no exception.

Given the state's posture on the issue, however, OSM may be forced to step in. If the state proceeds to issue new permits to mine operators with delinquent accounts, Griles said, OSM will be in a position to cite companies for violating the 1977 act.

Particularly in Virginia, the issue over the amount owed, who owes it and how to collect it is clouded by a number of factors.

•One gray area is that created by the so-called two-acre exemption. Companies claiming the exemption are not required to pay the AML fees. But thousands of dollars included on OSM's list are in dispute because the coal industry and the state and federal governments have yet to agree on who is entitled to that exempt status.

•Also confusing the issue is the relationship between mineral holders and their subcontractors. Who bears the ultimate responsibility for paying the fees — the corporations that own the coal or the companies that mine it?

•Further complicating the collection of the unpaid balance is the fact that many coal companies on the list have gone out of business or have filed for bankruptcy. And some companies still active but stricken by hard times just plain are having trouble making ends meet.

The situations of Lambert Coal Co., Rapoca Energy Corp., and Excello Coal Corp. illustrate the complexity of the issue.

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What the list does not reflect, however, is the current court case in which Lambert claims it does not owe OSM any money because the company operates the two mines under the two-acre exemption. In fact, Lambert maintains that payments it made from 1977 through 1980 were made in error because of its exempt status.

In the summer of 1982, Lambert requested that OSM refund its money for those payments, according to Rogers McCall, Lambert's attorney in Abingdon. Instead, following a routine audit of Lambert's operation, OSM filed suit against the company demanding payment for all fees since 1980, McCall said. Lambert responded with a countersuit seeking its refund.

The two mines in dispute, which are company owned and operated, are under two acres, McCall says. But if new OSM rules tightening the eligibility standards are applied, the operations will exceed that amount. The validity of those rules have been challenged in court by the state and the coal industry.

"The reputation of the company has been excellent as far as compliance with DMLR and OSM overall. Their proud that record," McCall said.

**Rapoca Energy Corp.**

According to OSM's calculations, Rapoca Energy Corp. owes $93,304.77 in AML fees for coal produced on over a dozen mines it leases out to contractors in Buchanan County. The fees range from about $27 for a one-quarter payment on one company to over $20,000 for 15-months production on another site, according to the list. The back payments extend back to early 1980.

In November 1982, OSM filed suit against Rapoca to collect the fees. Rapoca responded to the action saying that it was not the operator of the sites and, therefore, was not the party responsible for paying the fees, according to Rapoca's attorney.

While a number of the companies operate under the two-acre exemption, the exemption is not Rapoca's argument, lawyer Elsey Harris told *The Coalfield Progress* Monday. The question is of control, he said. Rapoca, Harris says, is not the entity responsible because it does not operate its own mines.

If the contractors are not independent and Rapoca is the operator, Harris reasoned, then all those sites are but one site.

"This is just another attempt by OSM to eliminate the exemption," he said.

He noted that Rapoca is paid up on all AML fees on other sites.

Cases like those with Rapoca, Lambert and Excello stir doubts in the minds of industry officials as to the accuracy of OSM's December 1982 list.

"There are so many questions about that list," remarked Sandy Dysart, director of Virginia Mining and Reclamation Association. She questioned how OSM determined the tonnage and amounts owed. And she also refered to problems with the two-acre exemption and companies that have gone bankrupt.

Mrs. Dysart said that she and the VMRA board are evaluating the list. Most VMRA members that are included, Mrs. Dysart says, are in dispute with the two-acre exemption. Others, she said, weren't even aware they owned back fees.

Noting that some of the fees date back to 1977, Mrs. Dysart added: "This is poor management on OSM's part."

Dick Leonard, an OSM spokesman, said none of the amounts were estimated. They were based either on individual audits, reports filed with OSM or figures supplied by the U.S. Mine Safety and Health Administration.

Mrs. Dysart said VMRA is notifying all members who appear on the list. "If they legitimately owe it, they ought to pay it," she said.

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

SEP [illegible] 1984

Ms. Lynne Bernabei
Government Accountability Project
Institute for Policy Studies
1901 Que Street, N.W.
Washington, D.C. 20009

Dear Ms. Bernabei:

It is my understanding that you met on several occasions with Dr. Lisle Reed, while he was serving as the Office of Surface Mining's Acting Director, to discuss the Abandoned Mine Land Reclamation Program. As a result of those meetings and a letter from you dated July 23, 1984, requesting specific information on the fee compliance function, I have had my staff prepare the enclosed document.

If you have any further questions, you may contact me and I will make a decision at that time as to what additional assistance the Agency may be able to provide.

Sincerely,

(Sgd.) John D. [illegible]

[illegible] Director

Question 1:

How many Fee Compliance Officers (FCOs) does OSM currently employ? How many FCOs have you employed since the beginning of the program? Please describe the length of service and location of each FCO. How many Fee Compliance Contacts (FCC) does the Department employ? Please describe the Fee Compliance Contacts (FCCs') duties and responsibilities. Describe also the length of service and location of each FCC.

Response:

- OSM currently employs 29 FCOs, plus 2 vacant positions for a total of 31 FCO positions.
- OSM employed 30 FCOs prior to the 1981 reorganization
- Location of FCOs:

| | |
|---|---|
| Virginia | 2 |
| West Virginia | 5 (plus 1 vacant) |
| Pennsylvania | 4 |
| Ohio | 2 |
| Kentucky | 10 (plus 1 vacant) |
| Indiana | 1 |
| Missouri | 1 |
| New Mexico | 1 |
| Alabama | 2 |
| Tennessee | 1 |
| Total | 29 (plus 2 vacant = 31) |

- See Attachment 2 for length of service information
- OSM employs 1 FCC
- Attachment 1 is a copy of the FCC's Position Description
- Location: Harrisburg, Pennsylvania
- Length of Service: 4 years 11 months

Question 2:

For each FCO and FCC listed above, please state the following:

(a) his/her educational background, including any educational background relevant to FCO's audit or collection responsibilities;

(b) his/her on-the-job training;

(c) his/her relevant auditing or collection experience in any other agency or business;

(d) his/her grade level.

Response: See Attachment 2.

Question 3:

Describe any formal training program for FCOs during the life of the AML Program.

Response:

The first job specific training course for the Office of Surface Minings FCOs was held in September 1981. A modification of this course has been held periodically since that time for newly hired FCOs.

Two workshops have been held to address specific operational problems. A third workshop is tentatively planned for early 1985. Copies of agendas for all sessions held to date are attached (See attachment 3).

Question 4:

Describe the comprehensive training program for FCOs currently being developed, the expected completion date for development of the program, and the scheduled date for beginning the program.

Response:

The comprehensive training program currently under development will be an updated, revised version of previous FCO training. Emphasis will be on changes in the FCO job structure, specifically the audit. Such subjects as auditing theory, standards, techniques, format, practices and procedures will be addressed. A written manual will be prepared to be used as an on-the-job training tool for the new FCO and reference guide for the more experienced FCO. We are expecting to have this course completed in early 1985; however, we may have to adjust this schedule should other unforseen and unplanned activities occur.

Question 5:

Describe the duties and responsibilities of the FCOs and FCCs and how, if at all, those duties and responsibilities have changed throughout the life of the AML Program. Please provide a job description of an FCO position.

Response:

Prior to the passage of the Debt Collection Act of 1982, the FCOs were responsible for OSM's collection effort as well as the conduct of routine audits. Currently, the primary responsibility of the FCO is to audit coal companies with no actual collection responsibilities. As a result of this change in responsibilities and other refinements to the program, a new Position Description (PD) is being developed; however, as the PD is not yet complete, attachment 4 is a current PD that includes the existing duties and responsibilities of the FCO.

Question 6:

Describe the criteria by which FCOs (or FCCs) audit coal operators and the written guidance and authority to FCOs regarding these criteria. Please explain when and in what manner the criteria have changed over the life of the program.

Response:

FCOs audit coal operators using standard guidance and procedures. At the present time an FCO uses the last audit date and amount produced as standard audit selection criteria, i.e., a company with a substantial amount of production is selected when a significant time has elapsed since the last audit date.

Prior to OSM's reorganization, companies were scheduled for audit on a three year cycle.

Question 7:

What percentage of his/her working time does each FCO and FCC spend doing audits? What percentage of his/her working time does each FCO and FCC spend in traveling to and from mines to conduct audits?

Response: See the response to Question 21 and the attached copy of OSMs Reclamation Fee Audit Report (Attachment 6).

Question 8:

How many audits has each FCO and FCC conducted for each year, beginning in 1978? Please break down the number of audits by FCO/FCC, field office and Region.

Is each audit conducted during each relevant year comparable in terms of method used and time to complete? If not, explain the differences.

What does an FCO do in conducting an audit? What is the average time required to audit a small versus a large company? Have the methods of conducting audits changed since 1978? If so, how?

Response:

- See response to Question 12.
- In general, the overall method of conducting an audit has not changed since the inception of the program; however, the quality and quantity of the FCO's work has increased as the records that the FCO examines are more verifiable in 1984 as opposed to 1978 due to the increased cooperation of outside agencies, e.g., Mine Safety and Health Administration, State Revenue Offices, IRS.
- See attachment 4 a copy of the FCO PD.
- As stated in the responses to both question 7 and 21 the data currently being entered in OSM's ADP system cannot yet be manipulated to determine the average time for conducting audits. We do not know how you would distinguish a large from a small mine--by coal production, number of mines, employees? OSM can only assume at this point in time that the average time to conduct an audit would depend on the availability of a company's books and records and the organization of the books and records.
- As stated above, the overall method of conducting an audit has not changed.

Question 9:

How much underreporting have audits uncovered, beginning in 1978 through present, separating the figures by FCO/FCC, field office and Region?

Define underreporting as used in answering this question.

Question 10:

How much nonreporting have the audits uncovered, beginning in 1978 through the present, separating the total amount by FCO/FCC, field office and Region?

Define nonreporting as used in answering this question.

Response to 9 and 10:

No distinction is made in the Fee System between non-reporting (i.e., failure to file an OSM-1), under-reporting (i.e., failure to indicate all tonnage sold) or over-reporting. Any numbers, tons and/or money provided would be net changes in previously reported amounts. Any numbers provided by the Fee System would be based on an assumption regarding the origination of late reports. That assumption is that late reports are not voluntary and are submitted as the result of an FCO action e.g., audit, phone call, or personal contact. An analysis using these assumptions for Fiscal Years 82, 83, and 84 thru 05/31/84 is included as attachment 5. Analyses extending further back than FY 82 would be dependent upon the availability of old reports with the required data. Examination of the office files indicates that the proper reports are no longer available. No breakdown by FCO is available in the existing Fee System.

Question 11:

How do FCOs initially find those coal operators who have underreported? How do FCO's find those coal operators who are nonreporters, that is, those who fail to report or pay AML any money?

Response:

Normally underreporting is discovered through the conduct of routine audits; however, underreporting is discovered through various other sources (e.g., third party purchased coal, an honest operator informs OSM of a dishonest one, the FCO compares production figures reported to OSM against what is reported to outside agencies such as Mine Safety and Health Administration and State Revenue Offices).

Question 12:

How many operators of active mines have been audited at any time since the beginning of the program? What percentage of the operators of active mines are audited by OSM each year?

Response:

A report exists that lists all mines that have an audit date on the master file. There is no way of determining if the mine was active at the time of the audit, but we can determine if an audited mine is currently active or inactive. The system stores only one audit date; thus if a mine has been audited more than one time, only the last audit date is reflected on the file. A report is currently being written that will sort the audited mines in date audited order, by running and retaining an end-of-year summary we will have, in the future, currently - unavailable historical data. Thereby identifying the minimum number of audits performed during a Fiscal Year.

Question 13:

To what, if any, other list of coal operators do FCOs have access to determine whom they will audit? What if any legal arrangement has been worked out in order to allow FCOs access to this list(s)?

Response:

- o OSM entered into a Memorandum of Agreement with the Internal Revenue Service in July 1982 to provide OSM's audit findings to the IRS. These have been furnished to the IRS monthly since that time. The Internal Revenue Code will not allow sharing with OSM of taxpayer's information reported to the IRS. We are continuing to work with the IRS to amend the Code to allow sharing of excise tax and other information.

- o OSM has Cooperative Agreements with the States of Arkansas, Kansas, Kentucky, Oklahoma, and Tennessee to share State coal severence tax information. Certain other states share this information informally with OSM's FCOs.

Question 14:

Have the FCOs identified any wildcatters who fail to pay AML fees? If so, how many? What amount of AML fees do these wildcatters owe the Department of Interior? How did the FCOs identify the wildcatters?

Response

- o We presume your term "wildcatters" refers to someone mining outside of the law, one who does not obtain a MSHA number or a permit, one who has no intention of reclaiming the land, and one who has no intention of paying any fees or taxes. Within the context of the fee compliance program a wildcatter is simply an unknown nonrespondent (as opposed to a known nonrespondent) since, by definition, a wildcatter will not identify himself to OSM.

- o Wildcatters may or may not owe OSM a great deal of AML fees - since we don't know who they are, how many of them exist or how much they produce, we can't define the size of the problem.

- o There are several sources of information available to the FCO for identifying previously unknown operators. The major source is through coordination and communication with the Title V inspectors who are in the field or in contact with the State, where the discoveries are made. Inspectors' records may distinquish illegal (i.e., wildcat) from legal operations; however, FCOs have no need to do so, for any operation that fails to pay required fees is "illegal" in terms of the fee compliance program. Other sources are through tipple audits, third party purchased coal, complaints or citizen informants.

Question 15:

What is the current geographical distribution of FCOs? For how many active mines is each FCO responisble?

Describe any reorganization of FCOs and FCCs and the reason for such reorganization. If the reorganization has led to an FCO being responsible for fewer or more active mines, please explain. In addition, explain the rationale for making FCOs in any particular location responsible for fewer or more active mines than other FCOs.

Response:

Currently, OSM has a workforce of 31 FCOs distributed throughout the country. The following table provides a geographical distribution of the FCOs and the indication of the number of active mines for which each is responsible.

| Field Office | Geographical Area Of Responsibility | # of FCOs | Active Mines |
|---|---|---|---|
| Big Stone Gap, Va. | Virginia<br>North Carolina | 2 | 778 |
| Charleston, W. Va. | West Virginia<br>Maryland | 6 | 1,577 |
| Harrisburg, Pa. | Pennsylvania<br>Rhode Island<br>New Jersey<br>Massachusetts | 4 | 1,636 |
| Indianapolis, In. | Indiana<br>Illinois | 1 | 165 |
| Columbus, Oh. | Ohio<br>Michigan | 2 | 392 |
| Kansas City, Mo. | Missouri<br>Oklahoma<br>Texas<br>Louisiana<br>Arkansas<br>Iowa<br>Kansas | 1 | 118 |
| Albuquerque, NM. | New Mexico<br>California<br>Colorado<br>Utah<br>Arizona<br>North Dakota<br>Montana<br>Alaska<br>Washington<br>Oregon | 1 | 190 |
| Birmingham, ALA. | Alabama<br>Georgia<br>Mississippi<br>Florida<br>South Carolina | 2 | 249 |
| Knoxville, Tenn. | Tennessee | 1 | 446 |
| Lexington, Ky. | Kentucky | 11 | 3,792 |
| TOTAL | | 31 | 9,343 |

On May 20, 1981, Secretary of Interior, James Watt, issued Secretarial Order Number 3065 to reorganize the Office of Surface Mining. The reorganization was designed to streamline OSM operations and better equip the agency to provide oversight to State primacy rather than remain the primary regulatory authority. The reorganization did require some individuals to change locations, but, in general, it had minimal impact on the FCOs. The reorganization did not result in any significant change in the number of FCOs (prior to the reorganization, OSM maintained a staff of 30 FCOs), and did not affect the number of active mines for which each FCO was responsible.

Due to geographic considerations and fluctuations in the number of active mines, the number of mines for which an individual is responsible will vary from that of another. The workload of each FCO was given a great deal of consideration and, although there were some differences, the workloads for each FCO at the time of the reorganization were roughly equivalent.

OSM realizes that periodic adjustments to staffing levels may become necessary due to changes in the workload. OSM is currently conducting a workload and staffing analysis of our field offices to determine what adjustments need to be made. It is probable that when the study is completed some adjustments to the number and geographical distribution of FCOs will be made.

Question 16:

What percentage of time of any FCO is spent on administrative responsibilities? What percentage of time of FCCs is spent on administrative responsibilities? Define these administrative responsibilities.

Response: See response to question 21

Question 17:

What support personnel is (sic) currently available to FCOs and FCCs? What is the grade level, educational and professional background and training of this support personnel?

Response:

| | |
|---|---|
| o Grade Level: | GS-301-12, AML Program/ Fee Compliance Specialist |
| Educational Background : | M.A. Political Science |
| Professional Background: | Facility Compliance Officer (Federal Government) |
| Training: | None |
| o Grade Level: | GS-303-5 Program Clerk (Typing) |
| Educational Background: | Business School Graduate |
| Professional Background: | None |
| Training: | Olivetti Memory Typewriter |

In addition to these persons clerical support is available to all FCOs. In most offices this clerical support is shared with the AML or regulatory program.

The GS-301-12 person that is indicated as "support" is assigned jointly to the AML program and the fee compliance program. This person is available to conduct fee compliance audits if necessary.

Question 18:

How was the number of 31 FCO and FCC personnel determined? How was the current geographical distribution of FCO and FCC personnel determined? Describe any changes in the number and/or location of FCO and FCC personnel expected in the near future.

Response:

o The number and distribution of FCO's was based on a workload analysis conducted prior to the May 1981 reorganization of OSM. The allocation of staff was based on the perceived workload (based on active mines) and geographic considerations. The staff was distributed in a manner so that the workload for each FCO was roughly equivalent.

o The current distribution of staff is based on the original distribution made during the reorganization in 1981. Although some minor adjustments have been made, no significant changes in that allocation of FCOs has occurred.

o As stated in Response #15, OSM is conducting a workload and staffing analysis. If the workload has increased or shifted significantly, adjustments to current staffing levels and the geographic distribution of staff will be considered.

Question 19:

What portion of the total amount of underreporting found by FCOs has been collected by the Department? When?

What portion of the total amount of nonreporting found by FCOs has been collected by the Department? When?

For any such amount not as yet collected, please explain the current status of that amount and the reason the Department has not been able to collect the total amount due.

Please reference your answers to questions 9 and 10 above.

Response:

We refer you to the response to questions 9 and 10, as the same technique would be employed to determine increases in collected amounts and uncollected amounts. For uncovered amounts not yet collected, there is no way to determine their status. The billing system and current bill codes make no distinction as to the source of a receivable.

Question 21:

What information will be available from the OSM automated data bank at the end of the year? How if at all will this system be used as a management tool instead of a financial tool?

What if any information is currently available in Washington from this system? What information is currently available only in Denver?

Response:

- The automated data base being readied in Headquarters will contain information on individual audits. This system is intended for use as a management tool to assess operator compliance and plan audit schedules, not as a financial tool. The system will be able to provide specific details concerning any particular audit conducted by an FCO (e.g., quarters examined, original tonnage reported vs. adjusted tonnage, fees found to be paid/to be refunded). Additionally, aggregate information on all audits will be able to be compiled, which should permit selection of mines for audit with the highest possibility of unreported liability. For example, if analysis indicates most additional fees were uncovered when auditing companies in Appalachia producing less than 100,000 tons per year and having between 3 and 5 mines, OSM would be able to focus its attention on such companies in a future year.
- Until the system has been fully developed the data in this system can not be manipulated to provide reports, statistics etc. OSM has procured the services of a contractor who currently is assisting with data input from the attached form completed by an FCO on every audit (Attachment 6). Also, OSM is currently exploring available options in an effort to expedite the development of the system.

  The only automated information that is currently available is financial information maintained in Denver.

Question 22:

Please provide all program evaluations of fee collection and fee compliance under the AML Program referenced in your June 20, 1984, letter.

Response:

No specific program evaluations were referenced in the June 20, 1984, letter; however, GAO conducted a study of the AML program in 1983. Attachment 7 is a copy of a letter from GAO to OSM's Director pertaining to that study.

Question 23:

Has a peer review system for evaluation of FCOs been initiated? If so, please describe it. If it has not yet been initiated, please describe the program as it is planned and the date when you expect to implement it.

Response:

OSM has not initiated a peer review system for evaluation of FCOs. There are no current plans for implementation of such a system.

Question 24:

Please provide all other statistics and/or data which indicate the level of compliance of coal operators with the AML Program, including but not limited to all statistics and/or data which describe the level of nonreporting, underreporting, wildcatters, and level of payment once notices of delinquency have been sent out. Please substantiate your claim of 98% compliance.

Response:

A copy of the latest audit report (See attachment 8) indicating the percent of collection of known liabilities is attached. Any other statistics derived from existing reports would be subject to the same restrictions as previously discussed.

BEST COPY AVAILABLE

Attachment 2
Page 1 of 4

| EMPLOYEE NUMBER | FEE COMP LENGTH OF SERVICE | EDUCATIONAL BACKGROUND | FORMAL TRAINING | AUDITING/COLLECTION EXPERIENCE IN OTHER AGENCIES | GRADE |
|---|---|---|---|---|---|
| 1 | 5 yr 9 mo | BS - Forest Resource Mgmt. | None | None | GS-11 |
| 2 | 5 yr 3 mo | 27 Qtr Hrs - Criminal Justice | Basic Investigative Techniques for Auditors, Developing and Presenting Audit Findings, Basic Course-Fee Compliance, Fundamentals of Acctg. I | None | GS-11 |
| 3 | 5 yr 6 mo | H.S. Graduate | None | Engineering Aid/Timekeeper w/ National Mine Corporation | GS-11 |
| 4 | 5 yr 10 mo | B.A. - Accounting | Basic Course-Fee Compliance Spec Collecting Individual (Consumer) Accounts | Accounting Technician - Federal Government | GS-12 |
| 5 | 5 yr | B.S. - Business Admin. | Basic Course for Special Investigators | Accounting Supervisor - State Government | GS-11 |
| 6 | 5 yr 4 mo | A.A. - Business Admin. | Revenue Officer Training, Basic Course for Special Investigators, Basic Investigative Techniques for Auditors, Basic Course - Fee Compliance, Special Investigators Course, Effective Governmental Auditing | Revenue Officer - Federal Government | GS-12 |
| 7 | 5 yr 8 mo | B.S. - Business Admin. | Special Investigations | Accountant - Coal Company | GS-12 |
| 8 | 6 yr 9 mo | B.S. - Business | AWL Occupational Development Program Workshop, Effective Collection Skills, AWL Occupational Development Program | Tax Examiner, Revenue Officer - Federal Government | GS-12 |
| 9 | 1 yr 7 mo | B.S. - Economics | None | Revenue Officer - Federal Government | GS-11 |

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| EMPLOYEE NUMBER | LENGTH OF SERVICE | EDUCATIONAL BACKGROUND | FORMAL TRAINING | AUDITING/COLLECTION EXPERIENCE IN OTHER AGENCIES | GRADE |
|---|---|---|---|---|---|
| 10 | 5 yr 6 mo | B.S. - Business Admin. | None | Accounting | GS-09 |
| 11 | 5 mo | B.S. - Psychology | Introductory Accounting<br>Principles of Accounting II | Claims Examiner - Federal Government<br>Tax Auditor - Federal Government | GS-09 |
| 12 | 5 yr 8 mo | A.A. - Accounting | Special Investigations | Clerk/Asst. Auditor - Fuel Corporation | GS-11 |
| 13 | 2 yr 2 mo | H.S. Graduate | None | None | GS-11 |
| 14 | 6 yr 7 mo | M.A. - History | None | Worker's Compensation Claims Examiner - Federal Govt. | GS-9 |
| 15 | 4 yrs 11 mo | B.A. - Marketing/Mgmt. | Governmental Bookkeeping and Accounting, Practical Statistical Sampling for Auditors, Credit & Financial Analysis, Interviewing Techniques for Auditors, Written Communication for Auditors, Dynamic Collection Techniques | Revenue Officer - Federal Government | GS-12 |
| 16 | 5 yrs 9 mos | H.S. Graduate | AML Occupation Development Program, Special Investigations | None | GS-11 |
| 17 | 2 yrs 2 mos | A.S. - Agronomy | Governmental Bookkeeping and Accounting | None | GS-11 |
| 18 | 1 yr 5 mos | H.S. Graduate | None | None | GS-11 |
| 19 | 5 yrs. | B.S. - Business Admin. | AML Occupations Development Program, Basic Course for Special Investigators, Auditing On-Line Systems | Management Auditor - Federal Government<br>Auditor - Federal Government | GS-11 |

Attachment 2
Page 3 of 4

| EMPLOYEE NUMBER | LENGTH OF SERVICE | EDUCATIONAL BACKGROUND | FORMAL TRAINING | AUDITING/COLLECTION EXPERIENCE IN OTHER AGENCIES | GRADE |
|---|---|---|---|---|---|
| 20 | 5 yr 3 mo | B.S. - Accounting | Basic Course for Special Invest.<br>Auditing On-Line Systems | Accountant - Federal Government | GS-11 |
| 21 | 3 mos | A.A. - Business Admin. | None | Accounting Technician - Federal Government | GS-11 |
| 22 | 7 mos | B.S. - Accounting | None | Revenue Agent - Federal Government | GS-07 |
| 23 | 2 yr 7 mos | 76 Semester Hrs. in Business Administration | Basic Course - Fee Compliance Specialist | Tax Examiner, Tax Technician, Supv. Tax Technician Federal Government | GS-12 |
| 24 | 5 yr 2 mo | Some College | Financial Acctg & Taxation in the Mining Industry, Basic Investigative Techniques for Auditors, Developing & Presenting Audit Findings | None | GS-12 |
| 25 | 4 yr 2 mo | 65 Qtr Hrs in Sociology | Special Investigations AMS Occupational Development Program, Basic Course for Fee Compliance Specialist | None | GS-11 |
| 26 | 3 yr 3 mo | A.A.S. - Business Admin. | AMS Occupational Development Program, Basic Course for Fee Compliance Specialist, Special Investigations | None | GS-11 |
| 27 | 5 yrs 7 mo | B.A. - Business Admin. | Basic Course for Special Investigators, AMS Occupational Development Program, Effective Collection Skills | Workers Comp Examiner - Federal Government | GS-11 |
| 28 | 3 yr 3 mos | 54 Semester Hours | Basic Investigative Techniques for Auditors, Developing and Presenting Audit Findings | Revenue Officer - Federal Government | GS-11 |

| EMPLOYEE NUMBER | LENGTH OF SERVICE | EDUCATIONAL BACKGROUND | FORMAL TRAINING | AUDITING/COLLECTION EXPERIENCE IN OTHER AGENCIES | GRADE |
|---|---|---|---|---|---|
| 29 | 1 yr 3 mo | A.A. - Business Admin | None | Tax Auditor - Federal Government | GS-11 |

ENVIRONMENTAL POLICY INSTITUTE

## PROBLEMS WITH OSM'S MANAGEMENT AND PERFORMANCE IN ABANDONED MINE LAND FUND FEE COMPLIANCE

1. OSM has only thirty Fee Compliance Officers (FCO's) to audit, by their own estimates, approximately 10,000 active mining units. By Agency figures, an FCO can audit a maximum of 100 companies per year under the best circumstances. That relates to only 3000 audits per year, of which some companies are repeatedly audited. In fact, some FCO's are assigned over 400 mines to audit. (Tennessee has 1 FCO to audit 446 mines. Pennsylvania has 4 FCO's to audit 1,636 mines.) This results in some companies never being audited within 4 years. And in reality, some companies never get audited within 5 years, which is the maximum length of a mining permit. During this period, some companies go out of business or reorganize under new corporate names without ever being audited. Thirty FCO's are clearly insufficient.

2. FCO placement in the field bears no correlation to the companies they must audit. This results in FCO's spending much of their working time traveling to audits and thus cuts down on the maximum number of audits achievable. For instance, by OSM's records, there is only 1 FCO to audit 190 active mines for 10 western states stretching from Alaska to New Mexico.

3. There is apparently no minimum qualifications for FCO hirings. According to OSM's records, some FCO's are hired as low as the GS-7 and GS-9 level. Some only have high school diplomas. Others have no auditing, accounting, or collection experience at all. This, combined with the lack of comprehensive training, has often resulted in poor quality audits.

4. OSM's training of FCO's is haphazard and uncomprehensive. Training courses lasting only a couple days are only periodically held. Coupled with low hiring qualifications, a poor training program results in poor audits.

5. OSM keeps no meaningful statistics regarding fee compliance audits. For instance, no data is compiled indicating the amount of fees detected by each FCO that is under- or unreported. Such statistics are essential in evaluating the adequacy of the number and placement of FCO's, as well as the program at large.

6. OSM does not conduct a program evaluation of its fee compliance program on any meaningful level except to compare DOE coal production figures with fees collected. Without such evalution, OSM is at a loss to determine the effectiveness of its program, problem areas, or adequacy of management and resources.

7. Little of the approximately $30 million in outstanding fees OSM has detected as delinquent are being collected. According to the Solicitors Office, as of March 1984, only $3.2 million was recovered by the Department out of the $27 million that was then outstanding. Most of these delinquent cases are backlogged at the Solicitors Office. A small number were given to a collection agency. In addition, a small number are still being processed at OSM.

8. OSM has taken few alternative enforcement actions against delinquent operators known to be actively mining. As of October 1984, OSM has issued only 27 Notices of Violatons (NOV's) to delinquent operators as authorized under Section 521 of SMCRA. Our information indicates that many of these NOV's were even issued to the same operator. There are hundreds of delinquent operators who are actively mining today, some of which have owed funds since 1978. Alternative enforcement actions automatically kick in greater penalties and other inducements for an operator to come into compliance. Furthermore, it is an alternative to the backlogged situation at the Solicitors Office.

9. OSM does not have a uniform policy for requiring its field offices and the state regulatory authorities to deny new mining permits to delinquent operators as required under 30 CFR 786.19(h). OSM has no policy to regularly provide its field offices and the states with its printout of delinquent operators. In reality, permit denial is irregularly done if at all. This results in some mining companies who owe hundreds of thousands of dollars--some since 1978--to continue to be granted new mining permits.

10. OSM does not have a comprehensive computer tracking system to interface operators and their controlling companies with outstanding violations and AML fee delinquency. This system is essential to ensure compliance of the Act. and more importantly, prevent these illegal operators from mining new areas, creating more mining abuse, and evading additional fee compliance.

11. As of April 1984, little meaningful statistical information regarding fee compliance was being provided to OSM in Washington, where Title IV is headquartered and where policy decisions are made. Instead, auditing data is being sent to the OSM Finance Center in Denver for bill processing. In fact, it is apparent that the Denver Center regularly sends little data to Washington and often appears to operate independently of Title IV management.

12. OSM's Title V staff and its field offices continue to have an uncommunicative and often adversarial relationship with the Title IV staff in Washington. The two divisions have historically failed to work in cooperation with each other in sharing information, data, resources, policy goals, or purpose. This has resulted in the Agency's failure to take alternative enforcement actions and to deny new mining permits to delinquent operators. It has also attributed to poor detection of operators who underreport fees owed.

Mr. **Synar**. Mr. Murphy.

## STATEMENT OF TIMOTHY R. MURPHY, DIRECTOR, SOUTHERN APPALACHIAN LEADERSHIP TRAINING PROGRAM

Mr. **Murphy**. Yes, Mr. Chairman, I don't have a statement I am going to read from. I wish to add to your remarks, your introductory remarks, that poignantly pointed out what the AML fund is all about.

There is a direct linkage between the collection of the fees and project implementation in the field. Jim Lyon has just stated a real problem in competition over these dollars. The States and OSM have worked since passage of the act to set up a rigorous procedure for putting projects through the pipeline. In doing so, I think there have been some problems instituted.

There is the problem related to the jurisdiction between emergency projects and whether OSM will in its own judgment make the State put that into the State's own priority list. I have added an example of what kind of problems this can create in my testimony. A woman was killed in McDowell County, WV, from a refuse pile where OSM made a decision last August that the pile posed no danger. And yet, she was killed, her daughter was hospitalized. Instances like this are probably rare, but they do exist, primarily because of the competition over dollars and whether OSM is going to use its own fees and its own share of its funds to process a project through the pipeline. I think that the death of Mrs. Altizer was the grossest kind of mistake that could have been made in this instance.

The primary purpose of why I am speaking today is my own organization's work with citizens around ground water damage abatement problems related to coal mine drainage that has historically occurred from both deep mines and surface mines in the Appalachian region. I don't know about mining in your region of the country.

Mr. **Synar**. There is a little thing called Tar Creek.

Mr. **Murphy**. Same problems I presume.

Well, in the three States that we have looked at—West Virginia, Virginia and Kentucky—there is a wide variance between how those States have developed their own procedures for targeting and identifying which projects go into the inventory. Virginia and West Virginia do not really adequately identify ground water damage associated problems into any kind of scoring mechanism for adding projects to the inventory site list. Kentucky has done better and is more active in terms of adding inventoried sites to their inventory and placing them into the pipeline for project development.

The real problem boils down to whether OSM makes a judgment that ground water damage abatement problems are a priority 1 or 2 classification or whether they are going to go with priority 5. From a citizen's point of view, what is the difference between somebody who is polluted by bad air versus drinking polluted water?

Mr. Chairman, water is life. In the eastern Kentucky coal fields over 50 percent of the residents get their water, their primary drinking water, from ground water through private wells. The number of wells and extent of well pollution by mine drainage is really unknown. In the areas where there are concentrations and people have complained, the State has moved forward with AML projects. Kentucky perceives a philosophical difference with the OSM in developing these kinds of projects for a number of reasons which I won't go into right now. But when the issue boils down to a judgment of a priority 1 and a 2 versus a priority 5, Kentucky is willing to take that risk, and I think Kentucky deserves some credit for that.

The other States aren't, though. They are chilled by the process. Of feeling down the road that their using their own moneys at this time to develop a priority 5 project they will be penalized later in the distribution of Federal share moneys in the future years. The distribution of Federal share moneys in the future is a big issue that remains. It detracts from these State's own judgments about where and how they are going to spend their money. This has basically prevented any other State besides Kentucky to develop any kind of ground water abatement protection projects. In one exception, the Congress line itemed one project in the appropriation bill in Virginia.

That primarily is my message today. Needed ground water projects are being denied by the way OSM has established its priority procedures.

[The prepared statement of Mr. Murphy follows:]

July 11, 1985

Before the ENVIRONMENT, ENERGY AND
NATURAL RESOURCES SUBCOMMITTEE

## HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

## TESTIMONY

of

Timothy R. Murphy, Director
Southern Appalachian Leadership Training Program
Route 5, Box 411
Versailles, Kentucky 40383

**MR. CHAIRMAN**, I am pleased to be invited to testify before this distinguished Subcommittee today, as you continue forward with needed oversight into the Office of Surface Mining's administrative performance in implementing Title IV of the 1977 Federal Surface Mining Act. The creation of Title IV, the Abandoned Mine Lands Program, by the Congress is an inspired visionary approach toward resolving part of our nation's past approach toward its coal producing regions. On the mountainsides, back in the drifts and shafts, and coursing through its waters coalfield communties paid for the legacy of mining practices that diminished the quality of life, that endangered the necessary resources to sustain human habitation of whole areas, and that cutoff most chances for any alternative economic opportunity. The Congress instituted in Title IV fundamental justice with a tax on the production of coal requiring the owners of coal and the consumers of coal to pay back just a little to these communities in order to bring back the land and water in parts of these places.

Accordingly, it is fitting that the Subcommittee has thus far zealously focused upon the failures of the executive branch to adequately gather-up the AML tax for its intended use. Collection of all the tax is not only fair and right, but every dollar is vitally needed to continue action against the destructiveness of environmental pollution and the dangers of a wantonly landscaped terrain.

I am very encouraged that the Subcommittee now wishes to begin to look beyond the tax collection issue and into the substantive areas of the AML project selection implementation. It is my privilege to offer the Subcommittee the knowledge we have gained over this widely varied programmatic landscape. In saying "we", I speak as Director of a small 10 year old nonprofit, non-governmental adult education program, S.A.L.T. - short for Southern Appalachian Leadership Training Program, whose primary function has been to assist in the development of local community leadership to resolve local and systemic issues related to poverty and social improvement. I am also serve as co-Chair of the Rural Coalition's Natural Resources Task Force which has a long standing interest in public policy development in the coalfields.

In the last two years SALT has worked in a number of communities around abandoned mine land issues. First, at Cranks Creek in Harlan County, Kentucky where we ran into barriers preventing the successful demonstration of an AML project for groundwater damage abatement. SALT is now working more generally in Kentucky, Virginia and West Virginia in assessing the makeup of these state AML programs and how they might approach groundwater damage abatement projects under AML. We are "kneedeep" into producing a research publication for communities on utilizing AML projects and thus my comments today are shaded more toward preliminary findings than they will be in a few months from now.

Citizens and Local Officials Support the AML Program.

Perhaps better than Congress instinctively knew during the fight for passage of P.L. 95 - 87, the AML Program under Title IV operates with more cross-sectional enthusiasm and support than its regulatory counterpart in Title V particularly in the Appalachian coal producing region. AML carries the virtues of a carrot in a carrot and stick legislative approach. AML is genuinely accepted and regarded as a plus in communities from regular citizens to business and elected officials. When an abandoned mine creates a problem for members of a community, they are indeed vocal and visible in their support for the AML project proposed to alleviate it. I have seen churches, public meeting rooms and courhouses filled in support of AML projects.

This, however, is not true for all proposed AML projects. A largenumber of those undertaken are not locally perceived as addressing a vital problem affecting their immediate interests. Yet, most of these projects are nevertheless justified on the basis of engineering or environmental factors. And importantly, few are ever criticised as wasteful, wrong, or anti-coal.

The message is strong and unmistakeable - Title IV is meeting a truly felt need in the coalfields, particularly those in Appalachia. With this understanding, in beginning its investigation into the operations of OSM, the subcommittee should be prudent to premise its expectations with the position that no matter what faults, inadequacies and failures there are to be found, the AML program is delivering a substantial "good", - a product worth its salt.a product worth its salt. This is different news than that of the flagrant failures and obstructions placed in the path of accomplishing minimal stripmine regulation for the nation under Title V which have so distressed Chairman Udall and other Members of Congress.

Hence, the yardstick for Title V has been poor management capacity means weak and ineffective regulation. For Title IV, if there is poor management capacity, there have nevertheless been good AML projects undertaken and completed. I think your initial screening of OSM performance will initially beg such questions as:

a) have some legislative intents been misjudged through inflexible and inadequate priority setting,

b) is OSM watchdogging the States selection of projects to adequately assure citizen input into site and project selection,

c) is OSM assuring AML funds are being spent in the most cost effective manner to meet the realities of existing abandoned mine land hazards and felt citizen needs.

The Interface with Emergency Situations and Regular Project Priority Setting

One of the enormous responsibilities OSM faces is the distinction it must make between judging the hazards created by AML sites is whether to address life-threatening sites as emergency projects or to allow them to fall within the scope of state priority setting. You will recall in the period of 1977-1980, OSM worked exclusively in the field to identify and undertake projects which corresponded to situations imposing either immediate safety risk or posed serious threat to human health. Following the assumption by the individual states of AML primacy, OSM still maintains an on-going response mechanism to rapidly respond to newly identified life threatening situations.

How well OSM does this I cannot fully say, although in the main they perform this responsibility rigorously and conscientiously. There is, nevertheless, a major internal administrative judgement OSM is forced to make on committing itself to invoking the emergency priority. When it does invoke it, OSM is committing its own share of AML funds rather than relying on the State involved to pursue the project utilizing its own share of AML funds. This may create many borderline judgements.

I know of one recent extreme mistake made in this judgemental area and I suspect there are many lesser ones. In April of this year Mrs. Gracie Mae Altizer of McDowell County, West Virginia was killed through exposure to toxic fumes from a gob pile considered by OSM in August of last year as posing no immediate life endangering threat. I have attached a newspaper article relating to this tragic event.

One of the ironies of the Altizer incident is the fact West Virginia's AML fund utilization has dedicated more of its funds to cleaning up refuse pile and quenching fires than any other state. Here, I could speculate that OSM may have conceded to the impulse that this situation would be routinely addressed by West Virginia rather than it staking its own funds into an immediate solution.

Groundwater Damage Abatement Needs are not adequately considered by OSM

It is our belief that in the area of groundwater damage abatement created by abandoned mine sites, OSM has most misjudged the need and adopted the most inflexible attitude. Part of the reason for this is how OSM established its initial project categories and developed its thinking regarding the inventoring of project sites. The image of an AML site consistently considered in the agencies processes following adoption of P.L. 95-87 is that of a specific acreage of disturbed surface or underground mine area.

Of all the kinds of damage inflicted by inadequate mining procedures of the past groundwater damage is the least likely to be isolated or confined to a abandoned mine site. Moreover, abating groundwater damage is the least likely to be accomplished by some kind of simple civil engineering procedure made to a particular piece of real estate. Goundwater can be contaminated many miles from an AML site. Moreover, the concentration of a number of mine sites in many areas makes it virtually impossible to track the source of the pollution.

We have not been able to assess the pervasiveness of how many areas in Appalachia are affected by groundwater damage. As the Congress has found out, until recently there has been little data available on groundwater resources, their use and the level of contamination. The AML site inventories sanctioned by OSM since 1977 do not generally collect or assess groundwater information because the information has not been readily available. In fact, some state inventories, such as West Virginia hardly even consider groundwater in its database. It does not appear on the site evaluation matrix (copy attached) of its OSM approved inventory.

In addition to the information limitations and OSM's failure to adequately consider the implications to groundwater associated with AML sites, is its administrative policy that chills AML project formulation by state approved programs. (We have not found any groundwater AML projects undertaken by OSM under its own authority). The most difficult consequence of groundwater damage is there are extremely few opportunities available with current technology to cleanup polluted groundwater. Once damaged the use of a particular groundwater source is impaired or lost. This leaves the only available abatement strategy to be the creation of an alternative source for people dependent upon groundwater.

This engineering reality has come up against OSM's biases. First, OSM does not like projects that do not attack a source of environmental damage. Second, OSM considers all projects where the abatement strategy is designed to get families off damaged groundwater sources as a proposal to construct new facilities. Any attempt by a state to seek approval for a groundwater damage abatement AML project is met with an automatic prioritization of "5". As only Priorities "1" or "2" are currently considered by OSM as federal concerns, all projects below this level are considered state discretionary projects. If AML funds are spent for discretionary priorities, then a state runs the risk of losing some future portion of supplemental funding from the OSM retained share of the AML fund.

Yet, numerous families in Appalachia are forced to drink mine polluted water from domestic wells, or at great inconvience, cost and risk haul their water if it is too obviously polluted or otherwise lost as a source. And here I can tell the Subcommittee that Kentucky among all the Appalachian coal states has taken the lead in challenging OSM's ingrained resistence to groundwater damage abatement projects. I am attaching for the record our narrative of two examples of projects formulated by Kentucky. Why Kentucky may have been so aggressive in pushing these projects is probably stems from a number of reasons. And it should be noted for the record, that OSM has approved all such projects submitted by Kentucky.

However, the future threat of diminishment of AML dollars from the allocation of federal share funds remains as a significant barrier. No other state has submitted a groundwater project. That there is such a need is obvious. In an interview with West Virginia's AML Director I was told groundwater projects were the largest unmet need in that state.

I would urge the Subcommittee to seek a change of administrative policy by OSM regarding groundwater projects.

### OSM Has Not Pushed the States Enough to Expand the Intventory of Elegible AML Sites

Some states, again like Kentucky, have aggressivbely expanded the inventoried number of elegible sites. But others, notably Virginia, does not adequately pursue the expansion of its inventory of AML sites. OSM found in 1983 that little more than 1000 acres of abandoned mine lands had been identified by 1983 in Virginia despite an expectation from TVA's 1975 survey that upto 19,000 acres might be elegible. This summer a citizens group is cooperating with the Virginia Department of Mined Land Reclamation in an effort to expand the number of elegible sites, yet we are aware of little OSM pressure to accomplish the same results.

It should be expected that a full inventory of pre-law damaged areas and resources will reveal that the efforts to date, while meaningful, have a long way to go in eliminating abandoned mine damages from their deleterious effects in coalfield communities. At this halfway point in the fifteen year program, it is our judgement that the Congress should be prepared to keep the tax and the AML program beyond the 1992 expiration date.

## POOR BOTTOM FORK

Approximately 150+ families live in the valley of Poor Bottom Fork in western Pike County, Kentucky which has been subjected to extensive pre-1952 deep mining. Water quality and quantity in the residential has deteriorated since mining operations were initiated in the vally. A portion of the community is served by a pipeline laid by the Marrowbone Creek Water District which is capable of serving about 50% of the families. However, the remaining 75 families that live beyond the earlier pipeline extension still suffer from poor water quality and quantity.

The initial request for assistance was submtted in a latter from Pike County Judge Executive Paul Patton in October, 1983 which listed three AML problems: a refuse pile, water problems on Poor Bottom Fork, and dredging the Hellier area of Marrowbone creek to reduce flooding. The Kentucky AML office commissioned Howard Consultants, Inc. to prepare a report on the "Impact of Abandoned Mines on Ground Water Quality, Poor Bottom Fork" that concluded:

By "severly" disrupting the hydrogeologic flow system in the Poor Botbom Fork drainage basin, extensive pre-1952 underground mining in the Lower Elkhorn and Elkhorn #2 seams has intercepted normal groundwater recharge for the area and diverted it to surface flow. This"diversion of the recharge has resulted in severe ground water quality deterioration" in residential wells " by inducing lateral and vertical flow from poor quality zones to replace normal surface recharge no longer available. It is therefore, our opinion that underground mining operations in the Poor Bottom Fork Basin are responsible for substantial ground water quality degradation in private water supplies." The Executive Summary puts it even more strongly: "Degradation of ground water quality in the Poor Bottom Fork area is directly related to elimination of recharge by the mining activity and consequent vertical and lateral migration of highly mineralized water to the residential wells to satisfy pumping demands." (page ii)

The study went on to say that because of the location of the problem area, the relative isolation of the affected portion of the basin and the overall hydrogeologic setting there is a limited number of approaches to improving the quality of the water supply problem.

The alternatives studied were:

1) No action - Unacceptable because it does not alleviate the problem which will only become more severe with time.

2) Deepening Existing Wells - Since nearby areas indicate the presence of salt water zones within 100 feet of the valley floor, deeper drilling would probably increase the potential for contamination and because of the possiblity of increased fracture permeability, the production capabilities of the wells would be questionable.

3) Extension of existing piepline from Marrowbone Creek Water District - since the lower portion of Poor Bottom Fork is already being served by an approved source of water, an extension of the existing pipeline would relieve the possibility for further deterioration of the basin and construction and maintenance costs would be minimized.

As a result of this study, the state recommended that the Office of Surface Mining fund the third alternative as a Priority II in an amendment to their Second Annual AML Construction Grant on June 19, 1984. The alternative consisted of installing 5500' of 6" water main, a lift station and small storage tank at an estimated cost of $150,000. It was rated as a Priority II because it was felt that "the contamination of residential wells and the unavailability of an alternative source of domestic water supply constitutes a most basic threat to public health, safety and general welfare." (Project Synopsis, Amendment to Second Annual AML Construction Grant, 6-19-84)

The Office of Surface Mining responded by replying that an additional alternative should have been included in the report "addressing the possible reclamation of the site." and requested that such an alternative be discussed "including advantages, disadvantages and feasibility" (letter from Hord Tipton, Director, Lexington Field Office to Dave Rosenbaum dated July 24, 1984) This precipitated a flurry of correspondence both within OSM and between the OSM Washington office and field office as well as between the state of Kentucky and the OSM field office.

Rosenbaum's response to OSM's initial query indicated that "in order to address this problem through source reclamation, it would be necessary to completely refill the mined void . . ." with a material that must have "a permeability approximating that of the in-place coal seams." Such an alternative was not even considered feasible because of the extreme costs associated with such a process, the lack of proven technology to implement the alternative and the extended time frame and uncerta for recovering the water quality would be unacceptable.

OSM continued to maintain that 1) the lack of an alternative discussing AML reclamation was "a serious ommission" from the study, ~~2) the study lacked sufficient qualified information to justify its conclusions~~ and 2) neither the state nor the study indicate "What is the threat to public health and safety?" (See note from POOR BOTTOM FORK I sent you earlier for full text of letters exchanged) The state was then given the option to re-submit the Poor Bottom Fork Project as a Priority V, Public facilities project. "It is OSM policy that projects involving construction of public facilities in lieu of direct reclamation techniques, such as the water supply line proposed in the Poor Bottom Fork Project, may be approved only as Priority V, irrespective of the nature of the adverse impacts addressed." (underlining my emphasis)

In re-submitting Poor Bottom Fork as a Priority V, Secretary Baldwin states very emphatically "I do not agree with this policy nor the reasoning underlying the policy. This project is, however, of such importance that I have chosen to execute the amendment so that these citizens can be protected without further delay."

The project was approved as a Priority V on October 5, 1984.

Project has been bid an is awaiting PSC approval to begin construction.

SITE EVALUATION MATRIX

| PARAMETERS | IMPACT RATING DEFINITIONS |  |  |  | Parameter Score | Relative Weighting Factor | Final Parameter Score |
|---|---|---|---|---|---|---|---|
|  | NONE<br>0 Points | MINIMAL<br>1 Point | MODERATE<br>2 Points | EXTREME<br>3 Points |  |  |  |
| Human Life, Health and Safety | No impact | slight potential for impact (not severe) | Potential adverse impact (severe) | Current adverse impact or great potential for same |  | 15 |  |
| Air Quality | No impact | occasional fumes | frequent occurences | frequent to continuous occurences |  | 5 |  |
| Water Quality | No impact |  | occasional adverse impact | continuous adverse impact |  | 5 |  |
| Fish, Wildlife and Plant Habitat | No impact |  | slight impact— no change in terrestial or aquatic numbers | extreme impact |  | 5 |  |
| Aesthetics | No impact | low public value | moderate public value | high public value |  | 4 |  |
| Surface Stability | No impact | sheet erosion—no sedimentation | erosion and sedimentation | severe erosion or sedimentation |  | 5 |  |
| Potential Flood Hazard | No impact |  | potential for blowouts | potential or current flood hazard |  | 5 |  |
| Local Employment | less than 5% unemployment | 5% unemployment | 5-10% unemployment | over 10% unemployment |  | 2 |  |
| Local Income | greater than per capita income | equal to per capita income |  | less than per capita income |  | 2 |  |
| Adjacent Land Value | less than 10.00 per acre | 10 - 50 dollars per acre | 50 - 100 dollars per acre | over 100 dollars per acre |  | 2 |  |
| Adjacent Land Uses | no compatibility |  | moderate compatibility | good compatibility |  | 3 |  |
| Affected Population | No impact | less than 50 persons | 50 - 1,000 persons | over 1,000 persons |  | 3 |  |
| Property Ownership | Private Ownership |  | Public and private parcels | public land |  | 2 |  |
| Potential Productivity of Affected Area | No impact | Scrub forest (example) | pasture (example) | cropland (example) |  | 3 |  |
| Potential Construction of Public Facilities | No public facilities | improbable that public facilities will be constructed | future potential | conformity to local development plans |  | 3 |  |
| Potential residential, industrial and commercial development | Low potential | possible | long range potential | high potential |  | 10 |  |
| Demonstration of enhanced technology | No new technology |  |  | new technology |  | 3 |  |
| *Adverse social or economic impacts during or after reclamation | High |  | can not determine | no impact |  | 5 |  |
| *Uncorrected conditions to continue after reclamation | High |  | partial | no impact |  | 15 |  |

SITE NAME:

LOCATION:

CODE NO:

RATER:

DATE:

7.5 QUAD

☐ INCIDENTAL RECLAMATION

☐ POTENTIAL MINERAL RECOVERY

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Welch, West Virginia, Monday Evening, April 1, 1985 Publication No. [illegible] Price 20 Cents

# Refuse Fire Blamed For Woman's Death

A 76-year-old Warriormines woman's death was apparently caused by fumes from a coal refuse pile near her home.

Gracie Mae Altizer died of carbon monoxide poisoning, the State Medical Examiner's office in Charleston reported today.

Altizer had been taken to Stevens Clinic Hospital March 23, where she was pronounced dead on arrival. Her daughter, Allyne Muncy, was also taken to the hospital where she was treated and released several days later.

Altizer's body was sent to a funeral home, and on March 24 was sent to the State Medical Examiner's office.

Carl A. Walker, senior Abandoned Mine Lands Program Specialist for the Office of Surface Mining (OSM) in the state, said construction bids for the refuse pile cleanup will be held Tuesday.

The cleanup could begin as early as Wednesday if the company chosen for the construction is able to move into place that soon, Walker added.

Nancy Roberts out of the Eastern Technical Center in Pittsburgh for the OSM was scheduled to be in the county today to obtain right-of-ways. She was also expected to go to the Warriormine site also.

The OSM investigated the coal refuse pile in August of 1984, and determined with the state that it was not of an emergancy nature at that time.

An inspector dug down to solid ground beneath the coal refuse pile approximately 35 feet from Altizer's home in August, so the house was on solid ground. The burning level was not severe, and was considered a nuisance rather than a hazard.

The site was then referred to the state's regular abandoned mine construction program, and a project proposal was made by Jim Lagos of the Department of Natural Resources.

Some time during the last month the burning worsened, but was not reported to the state or the OSM, Walker said. A house fire at the site last summer was the possible cause of the fire.

Under ideal conditions the construction would have begun today, Walker said. One reason for the delay was that smoke, steam and fumes will result from the quenching and extinguishing of the fire.

With schools closed for spring break beginning Friday, students at nearby War Jr. High will be less affected by the fumes from the construction.

Walker said OSM technical personnel responded immediately when called, getting to the site the same day. Work continued through the weekend on plans for the cleanup.

State personnel were on-site Wednesday after flying in by helicopter.

Walker said work is being done in close cooperation with Washington, Pittsburgh and Charleston.

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## STINKING BRANCH

The Stinking Branch watershed of approximately 1,000 acres is a tributary of Johns Creek located in the North central section of Pike County near the small community of Meta.

Most of the mining in the Stinking Branch Watershed has been in the Pond Creek seam which is about the same elevation as Stinking Branch itself. Mining of the Pond Creek seam often results in acid mine drainage problems. Records indicate that mining the area began in the early 1900's using punch mine which usually extended less than 100 feet from the surface for commercial sales and house coal. Such mining was done on a small scale in the watershed until about 1950 with little surface disturbance. In 1969, deep mining was begun and the area eventually abandoned in early 1976. A smaller deep mine is also known to have been in operation but there is no information available about the dates or extent of mining.

Groundwater is the only source of domestic water available to the 44 homes with a population of 150 people who live in the Stinking Branch watershed. Many of the residents no longer use the water for drinking or cooking. Problems include cloudy and discolored water, staining of clothing during the laundry process, unfit to drink due to taste, color and odor, film on cooking untensils after washing, film on the body after bathing, rusting pipes and fixtures and the need for water treatment devices.

Complaints of severely polluted water due to high concentrations of dissolved minerals were filed by the residents with the Kentucky Division of Water, the Office of Surface Mining, the Kentucky Bureau of Surface Mining and the Environmental Protection Agency in late 1979 and early 1980. Numerous on-site inspections and investigations were undertaken by the personnel from these agencies. Eventually, as a result of these visits and investigations, it was determined that active mining was not responsible for the water quality problems of Stinking Branch.

As is standard procedure in proposed AML projects, a feasibility study was approved in May 1982 to determine if there was a relationship between ground water quality problems and pre-1977 coal mining.

In a letter to the consultant (Kenvirons) dated 1-13-83, the Pike County Health Department made known its growing concern about the "severe health problems that could be attributed to contamination from past mining activities in the area. We are particularly concerned about the unusually high concentrations of iron and manganese. ." Treating the water by using filters results in excessive salt intake which in turn "increases the number of cases of high blood pressure, circulatory problems and is an unsuspected problem for persons on a salt-free diet." The letter goes on to explain that the "high acid content of drinking water can cause and/or aggravate gastric ulcers . . . " as well as increase the number of dental caries. It identifies an increase in the number of cancer cases due to hydrocarbon contamination as a long-range problem associated with the contamination from mining sources.

On April 5, 1983, a public meeting was held at the Johns Creek High School in Meta, Kentucky to let the affected citizens, local government officials and the interested public know the results of the study (approximately 75 persons were present at the meeting). The study clearly concluded that seepage due to pre-1977 mining of the Pond Creek coal seam had severely degraded the groundwater quality throughout the Stinking branch watershed to such a degree that the health, safety and general welfare of the residents was definitely threatened. And since the groundwater aquifer is constantly fed by drainage from stress fractures due to the abandoned mine operations, the groundwater quality would continue to suffer.

In addition to determining the degree of the problem and demonstrating the linkage to pre-1977 mining, the study identified seven alternatives to address the acid mine drainage problem of Stking Branch ranging from no action, to reclaiming the source, to expanding capabilities of already existing facilities. The least cost alternative was the development of a groundwater well field along Johns Creek outside the Stinking branch watershed with a treatment plant, pumping station, water storage facilities and distribution facilities to provide water to the residents at a cost of $1.3 million dollars.

At the request of the Johns Creek water District, this least cost alternative could be combined with on-going efforts by the Water District to obtain a Farmer's Home Loan to construct the necessary facilities. On August 5, 1983, Kentucky AML submitted an amendment to their First Annual Grant package requesting that the $1.3 million that was the estimated cost of the least cost alternative be used to supplement the funding being sought by the Johns Creek Water District to provide water from an already existing, approved water source. The Stinking Branch project was assigned a priority I ranking based on the study results and the observations of the Pike County Health Department.

The Office of Surface Mining (OSM) disputed the state's ranking the project as a priority I saying that they would only approve the Stinking Branch project as a public facilities priority V. An exchange of correspondence ensued with the state maintaining that "we have shown quite conclusively that the public health, safety and general welfare of the Stinking Branch residents are being adversely impacted."

OSM responded by submitting the study to their Eastern Technical Center in Pittsburg for review and comments to address whether or not the study adequately establishes a linkage between pre-law abandoned mine lands and domestic water quality in the area. The review found the study "to be lacking in certain necessary information to justify its conclusions. The conclusions are based on hearsay information from citizen interviews, unreferenced general statements and a limited sampling program"(which was considered questinable because of "apparent inadequate sampling techniques").

At this point in time, OSM suggested that the state either deobligate the monies requested and withdraw the Stinking Branch project since an agreement on a priority ranking could not be reached or that the state re-submit the project as a priority V.

While these exchanges were occurring, changes were also occurring in Pike County that would affect the project status. the Johns Creek Water District did not receive the FmHA loan they were anticipating. Pike county officials then requested that the state AML monies could be more appropriately used by combining the $1.3 million with funding from other agencies to expand the Marrowbone Water District and include the residents of Stinking Branch. The U.S. Army Corps of Engineers had agreed to donate a water plant site on Fishtrap Lake at the mouth of Grapevine and to sell raw water from the dam to the Marrowbone Creek Water District. The county is currently preparing applications to the appropriate agencies to assure a sufficient funding package is obtained. The agencies involved in this joint funding proposal and the amount requested are as follows:

| | |
|---|---|
| Kentucky Abandoned Mine Land Fund | $1,300,000. |
| Community Development Block Grant | 750,000. |
| Farmers Home Administration Loan | 500,000. |
| Appalachian Regional Commission | 500,000. |
| Private Investment (Local) | 500,000. |
| Kentucky Housing Corporation | 150,000. |

| | |
|---|---|
| Big Sandy Area Development District | 50,000. |
| Service Connections | 40,000. |
| TOTAL FUNDING PACKAGE | $3,790,000. |

Funding from the AML fund is contingent upon two conditions: 1) that the Marrowbone Creek Water District secure such funding as necessary to ensure construction of the project, and 2) that water be made available to all of the residents of Stinking Branch.

On May 22, 1984 the state AML submitted an amendment to its Third Annual Grant proposing that Stinking Branch be fund~~ing~~ed in the amount of $1,3 million as a Priority V in order to provide a safe, adequate drinking water supply to the residents of Stinking Branch.

In early June, AML was notified that all funding agencies had made a committment. AML will continue to review all plans & monitor work. Next step is the submission of a detailed design for the project in order to let bids

## 6. CONCLUSIONS

Based on the information which has been compiled and the data obtained from the field sampling program, the following conclusions have been drawn relative to the identified problems within the Stinking Branch watershed:

A. Water problems currently recognized in the area include groundwater quality degradation, and seepage of highly mineralized water from old house mines and associated strata of the Pond Creek coal seam.

B. Primary groundwater quality problems include low pH, and high concentrations of iron, manganese, and dissolved solids. Current levels exceed those maximum levels recommended by the Commonwealth of Kentucky, the U.S. Public Health Service and the U.S. Environmental Protection Agency for public water supplies.

C. The water problems currently existing are health related and therefore threaten the health and welfare of residents of the Stinking Branch watershed.

D. Although there are no previous records of groundwater quality in the watershed, the chemical constituents found in the groundwater are in greater quantity than should be expected from wells located in the geological formation.

E. The concentrations of iron and manganese are sufficiently great to render the individual commercial treatment devices ineffective without adding additional treatment and increased maintenance.

F. The rash of complaints concerning groundwater quality from 1979 to the present is AML related and is primarily due to drainage from old mine works through fractures in the rock strata to the groundwater aquifer currently being utilized by the residents of the Stinking Branch watershed.

G. Degradation of the groundwater quality in the watershed will continue as a result of the aquifer being fed by drainage through stress factures from the abandoned mine works.

H. The abandoned fan house opening may present a potential hazard to both animals and humans by virtue of being accessible.

STINKING BRANCH PROJECT
Table I - Alternatives

| DESCRIPTION | COST | ADVANTAGES | DISADVANTAGES | RECOMMENDATIONS |
|---|---|---|---|---|
|  | -0- |  | Does not alleviate the groundwater degradation nor abate the impact to the residents. | Deemed unacceptable since it does not address any of the AML concerns. |
| eclamation | Cannot be estimated without additional analysis. | Conceivably could reduce the flow of contaminated mine water into aquifers which serve as domestic water sources. | Process would require several years to eliminate the pollutant source and to flush the contaminated water from the groundwater aquifer. Requires a substantial drilling, pumping and treatment program with no reasonable assurance of success. | Entails long term operation and maintenance costs, and far exceeds current state-of-the-art reclamation techniques. Consequently, not recommended as a viable alternative. |
| e Groundwater Source Outside<br>d Area | 1,300,000 | Lowest estimated initial cost. Distribution lines would be laid on existing state/county road right-of-ways. | Requires purchase of land for well field and treatment facility. Uncertain that a dependable source of suitable water could be located. Extremely high operation costs for pumping and treatment, which would be passed on as user fees. | No public entity has expressed interest in assuming long term responsibilities; however, concept warrants further consideration. |
| ion to Proposed Pond Creek<br>istrict | 1,400,000 | Provides dependable source without need for construction and operation of a separate treatment facility. | Pond Creek District is only in planning stages. Long term cost of purchasing and pumping treated water are likely to be high. | Offers few long term advantages compared to other alternatives--not recommended for additional consideration. |
| ion to Marrowbone Creek<br>istrict<br>nes Branch<br>sey Branch | <br><br>1,750,000<br>2,100,000 | Same as "4" above, plus the Marrowbone Creek Water District is operational now. Both possible routes provide opportunities for adding other customers, thus offsetting long term costs to Stinking Branch residents. | Pumping requirements extremely costly. Also, route crosses ridges with known coal reserves--requiring costly condemnation actions. | Interference with recovery of coal resources and purchasing land are not particularly desirable, nor warranted at this time--not recommended over alternatives 3 or 7. |
| ction of Johns Creek<br>istrict | 3,000,000 | Provides dependable source through existing Marrowbone Creek Water District. Also, utilizes existing highway right-of-way--thus requiring no land acquisition and facilitating addition of 1200 customers, plus the Stinking Branch residents, including schools and businesses. | Dependent on approval of additional funding thru grants and loans to assure all possible district customers could be served. | Recommended as the overall preferred alternative, but somewhat exceeds AML objectives. Consequently, consideration should be given to participating with other federal, state and local interests in development of this water district. |

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Mr. **Synar**. Well, let me thank both of you because I think you have done a very good job in taking it upon yourselves as citizens and representing your groups to do proper oversight over what is being done out in the field. Obviously, the goal of the subcommittee today in this hearing and in past and future hearings on this issue is to ensure that the people that you represent are going to get a fair deal. And as you very adequately point out, Mr. Murphy, the fact is that small dollars can have great impact. We are not talking about really accomplishing the task when we lose a couple of million here and there that could clean up that refuse that you point out and everything else.

So we want to thank you. I don't have any questions.

Mr. Armey.

Mr. **Armey**. Mr. Lyon, are you familiar with the IG's report and recommendations?

Mr. **Lyon**. The latest one that came out?

Mr. **Armey**. Yes.

Mr. **Lyon**. Yes, I have briefly seen it. I, too, share the concern of OSM's promises that they are going to change some of these things. Plans are one thing, actions are something else.

Mr. **Armey**. Are you familiar with the organization's procedural plans?

Mr. **Lyon**. I have not received anything.

Mr. **Armey**. You might find it interesting to note that your points 2, 5, and 7, I believe, are included in that plan.

I read your testimony, and there is a little flavor in your testimony that bothers me. There seems to be, between the lines, a suggestion that maybe we have one of those bureaucratic symbiotic relationships that Mr. Gillivray spoke of with such flair. I almost get the feeling as I read your testimony that you think the agency and the miners have sort of ganged up on the folks.

Mr. **Lyon**. Well, I don't think the miners have ganged up on anything. I think if the agencies who are responsible for enforcing the laws in this case aren't doing so, the operators out there who are going to make a profit the best way they can. When they have to cut some corners, if no one is forcing them to pay the dollars, there is a real incentive there not to do.

Where the flavor that you speak of may come out is when we have approached OSM in the early 1980's over this issue I was amazed at how shut down we were. We look at the whole spectrum, not just AML. We look at enforcement issues and everything else. We gained much more access from the enforcement issues that are raised up and the enforcement people which tend to be the more controversial issues in the agency than we did with title IV. We simply didn't understand why we were being suppressed information. I think it became evident after a while.

Mr. **Armey**. I think we ought to consider the possibility as we conduct these hearings that OSM is an agency that is very sincere about carrying out their responsibility and trying their best to do so.

Mr. **Lyon**. I have met with Mr. Christensen several times since he took over, and at this point I am very optimistic that he brings with his arrival the authority to make the changes that are required. It is very promising. However, as I said before, we have to reserve our judgment until we see action.

Mr. ARMEY. I have watched this process for many years and I know it is very easy for us sometimes to feel like people within Federal agencies aren't doing their best, when, quite frankly, I think very often they are. I feel phrases like "They didn't have to resort to withholding information" and "They charged you unnecessarily," don't reflect the possibility that these folks are working very hard to not only do a job, but perhaps find ways to do it better. The agencies may even, for example, view your organization as one that is confounding their life a little bit. And if they demonstrate a little bit of impatience, I think we ought to be prepared to understand that this is not necessarily an indictment of the people which could draw us to any conclusion.

Mr. LYON. It is not just our organization as well. On this one issue, the example that I gave regarding the $500 an hour rate charge was certainly our organization, but we deal with a network of hundreds of citizen organizations, Mr. Murphy's included, who have had a variety of problems over the years in getting certain information, and quite honestly have objected to certain policies.

Mr. SYNAR. If the gentleman would yield. As a freshman, you haven't had the opportunity or the background experience of the committee's involvement in this area. The things that Mr. Lyon and Mr. Murphy point out, particularly Mr. Lyon, were what we found as a subcommittee when we began requesting information in our oversight capacity.

I think your point is well taken that we don't want to get into a situation where they have to provide so much information they can't accomplish their job, but not having been here for last year's hearings on this subject, you would be surprised at the improvement we have had in the ability to get information out of this agency.

Mr. ARMEY. Well, I am glad to see that. Which helps make my point; obviously they are trying their best to improve their performance.

Mr. LYON. As I say, clearly at this point we are optimistic. We have much to be optimistic about, but we are reserving judgment.

Mr. ARMEY. Thank you.

Mr. SYNAR. Thank you both very much.

Mr. LYON. Thank you, sir.

Mr. SYNAR. Our next witness will be Pat Esposito, subcommittee staff investigator.

Pat has been detailed to our subcommittee. He and his family have become active players in our subcommittee and he has been a tremendous hand.

Pat, there are not any really adequate words to express my personal thanks, but I think I speak in behalf of all the subcommittee members and the members on my staff upstairs that we really appreciate the contribution you have made.

Mr. ESPOSITO. Thank you, Mr. Chairman.

Mr. SYNAR. Now, with that would you stand up and let me swear you in?

[Witness sworn.]

Mr. **Synar**. Your entire testimony will be made a part of the record, and we look forward to you summarizing in less than 10 minutes.

## STATEMENT OF PASQUALE L. ESPOSITO, GAO DETAILEE TO SUBCOMMITTEE

Mr. **Esposito**. As I told you before, I will try.

Good morning, Mr. Chairman, and members of the subcommittee. My name is Pat Esposito. As an employee of the U.S. General Accounting Office I have been detailed to the subcommittee to assist in the reviews of various program activities of the Office of Surface Mining of the Department of the Interior.

The current investigation pertains to the Abandoned Mine Land Fee Compliance Program. The abandoned mine land fund could be losing millions of dollars because of OSM's inability to effectively identify and investigate unreported coal production by the coal industry. Additionally, a substantially delinquent debt of $33 million is currently outstanding, a good deal of which is owed by companies which, according to OSM records, are still actively mining.

Former OSM Directors testified before congressional committees that the AML Fee Program has been achieving high levels of compliance. In reality, Mr. Chairman, OSM has mainly focused its attention on what it has collected; that is known debt, as opposed to the additional fees that may be owed because of unreported or underreported coal production. Despite the previous testimony by former OSM Directors, the Fee Compliance Program is not functioning effectively or achieving the levels of compliance that was intended by the law.

OSM reports that it collected about $1.4 billion in AML fees since 1977. However, there is a serious question as to whether the projected revenues of $3 billion over the life of the program is sufficient to clean up the pre-1977 abandoned mine sites. Mr. Chairman, because the AML Fee Compliance Program is nearly halfway over, OSM must stop dwelling on what it has collected; instead, it must begin to ensure that all fees rightfully due the AML fund are identified and collected. OSM must focus on ways to improve the identification of unreported and underreported coal production and take the necessary enforcement measures to ensure that coal producers pay delinquent fee debt.

The Department's inspector general has cited many weaknesses.. My testimony will supplement theirs by discussing one, the failure of coal operators to report and, consequently, to pay the required reclamation fees for coal production, and second, the lack of alternative enforcement actions against operators who are delinquent in their AML fees.

OSM may be losing millions because of widespread unreported AML fees. Whether the AML fund has lost revenues because of underreported and/or nonreported coal production is an issue that has not received much scrutiny. OSM has not dealt effectively with this concern, and has not been successful in determining whether it is a significant problem. Mr. Chairman, as a result of my detailed comparisons of coal production data reported to the Energy Information Administration of the Department of Energy and that which is reported to OSM, I believe this committee can conclude that unreported coal production does, in fact, exist and should be given more attention by OSM than it has in the past.

The purpose of my examination was to determine whether significant underreporting and/or nonreporting of coal production is occurring, and involved a comparison of coal production data as reported by individual producing mines to EIA and to OSM. I chose Kentucky for my examination because of the number of mines and the significant amount of coal produced within the State. Certain adjustments had to be made to the data collected by EIA to assure that we were not comparing apples and oranges when examining coal production data. Attached is a statement of my study methodology.

By regulation, EIA has placed restrictions on disclosure of data reported by individual entities to other Federal agencies, and OSM has not obtained this detailed data. The EIA information was provided to the subcommittee consistent with the committee's general investigative authority. As required by its own regulations, EIA informed us that the information is considered confidential. For the purpose of this hearing, my testimony does not mention specific operators by name.

Mr. Chairman, I am convinced that OSM is losing millions of dollars in Kentucky alone because coal operators are not accurately reporting all the coal they produce. I examined data for 673 mines which were owned or operated by 176 companies during calendar year 1983, and found that nearly 5 million tons of coal were produced for which operators paid no reclamation fee. Dependent on whether production was from surface or underground mines, the reported fees could range from $741,000 to $1.7 million. If the 673 mines that I examined were representative of the approximately 3,800 actively operating mines in Kentucky, then the total amount of unreported fees is undoubtedly much greater. I believe that if an examination of all Kentucky mines were made a significant amount of unreported fees would be found.

Let me stress that the 5 million tons of unreported coal production is for one State for 1 year and involves only 18 percent of the active mines in Kentucky. Assuming that this quantity of unreported tons existed each year, then we could extrapolate that for 18 percent of the mines in Kentucky alone the AML fund could have lost as much as $12 million over the past 7 years.

In addition, some disturbing details emerged pertaining to the individual mines and companies examined:

Some companies failed to report coal production to OSM that they reported to EIA. These company mines were classified by OSM as, one, returning OSM's coal production and reclamation fee report but reported no production, two, inactive mines, three, mines were not on file, four, mines did not return OSM's coal production and fee report.

There are some companies that underreported or did not report their coal production at all who were also delinquent in paying previous reported AML fees.

All mines are not audited by OSM to ascertain whether companies are properly reporting coal production. Of the 673 individual mines examined, 491, or 73 percent, were never audited.

Of those that were audited, about 27 were last audited in 1980. Fee compliance auditors are not auditing all of a given company's mines despite OSM's policy. An examination of some recently conducted audits of mines reveal that none of the audits detected coal tonnage reported to EIA.

Since the MSHA mine identification numbers serve as the basis for establishing the identity of coal mines, one might expect that all these mine numbers would also appear in OSM's system for fee reporting. During my study I noted many instances where mines identified by MSHA were not yet included in OSM's information system. An OSM memorandum, dated January 23, 1985, identified the same problem, raising the concern that OSM's system was not identifying mines which are known to be responsible for paying reclamation fees. Neither I nor OSM know how widespread this problem may be; however, unknown sums of money may be lost for the period between when the mine reported to EIA and when OSM first identified the mine as responsible for reclamation fees.

Another important source of unreported reclamation fees are derived from coal operators who are known to exist but for some reason do not return OSM's quarterly production and reclamation form. In the February 1985 report, the inspector general concluded that audits of those operators who failed to file the quarterly report and pay reclamation fees have been the most productive in identifying unreported fees. However, OSM has not been successful in determining whether operators who failed to file a quarterly report are actively producing coal and are responsible for reclamation fees. Each quarter about 2,000 to 3,000 mines fail to return the quarterly reporting form. Fee compliance auditors previously were responsible for determining the operating status of companies which failed to file the quarterly reports, but could not keep abreast of the increasing list of nonrespondents. To address this longstanding problem, OSM awarded a contract to Dun & Bradstreet to investigate the operating status of nonrespondents. A May 10, 1985, D&B report on 1,053 mines owned or operated by 691 companies revealed that 614 companies, or 89 percent, were still in business. OSM's fee compliance auditors should investigate all quarters during which the mines did not respond to determine if they produced coal without reporting their reclamation fees.

OSM is not taking alternative enforcement actions against operators who fail to pay delinquent AML fees. Despite violations of OSM's stated policies and regulations, OSM is not taking action to revoke or suspend permits of delinquent companies. On October 2, 1984, OSM issued a policy directive implementing a new provision of the AML regulations that went into effect July 5, 1984. This directive outlines the procedures for issuing violation notices in order to initiate permit suspension and revocation actions against operators owing delinquent reclamation fees. The directive also required that enforcement action begin once the violators list has been prepared. Once violators are identified, OSM is to notify States so that they may take the appropriate steps to revoke or suspend the operator's permits. If State regulatory authorities fail to take the required action, then OSM is to begin Federal action.

Unsurprisingly, OSM has largely ignored this policy directive, and as a result, few enforcement actions were taken against operators who are delinquent in their AML fees. OSM has not even begun to take the first step, developing the list of violators.

As of April 2, 1985, nearly 1 year after the amended AML regulations went into effect, only 24 companies nationwide were issued violation notices for nonpayment of delinquent AML fees. The preparation of a policy directive is simply not enough. OSM must carry out its regulations and policies.

OSM habitually justifies its inability to collect delinquent debt on the grounds that many companies are out of business or bankrupt. However, I believe their premise is in error. To demonstrate: based on OSM's records, I identified 277 companies actively mining in Kentucky that were delinquent in their AML fees. Of the 277 companies, 162, or 58 percent, operated 193 active mines that were delinquent $500 or more; yet, only 3 companies had been cited for failure to pay AML fees.

Mr. **Synar**. Let me interrupt you right there, Pat.

We are going to have to recess for a vote. When we get back, we will go over your conclusions.

[Recess taken.]

Mr. **Synar**. If you will go straight to your conclusions, we would appreciate it, Pat.

Mr. **Esposito**. Yes, sir.

Mr. Chairman, my conclusions are simple and direct. The AML Fee Compliance Program is not functioning effectively and achieving the compliance intended by the law. Extensive underreported coal production may be denying the public Treasury millions of dollars desperately needed to finance the reclamation of abandoned mine lands. OSM's lack of action to aggressively pursue permit revocation and suspension actions against delinquent operators will only exacerbate further growth of the AML debt. Additionally, OSM's failure to identify and collect reclamation fees for all coal mining operations provides an unfair competitive advantage to those who do pay their fees.

This concludes my statement. I will try to answer any questions that you may have.

Mr. **Synar**. Thank you very much, Pat.

[The prepared statement of Mr. Esposito follows:]

TESTIMONY OF MR. PASQUALE L. ESPOSITO
SUBCOMMITTEE STAFF INVESTIGATOR

BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

July 11, 1985

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Pasquale L. Esposito. As an employee of the U.S. General Accounting Office, I have been detailed to the Subcommittee to assist in the review of various program activities of the Office of Surface Mining (OSM) of the Department of the Interior. The current investigation pertains to the Abandoned Mine Lands Fee Compliance Program -- an important program since the revenues raised under this program are used to finance reclamation of abandoned mine lands that existed prior to passage of the Surface Mining Control and Reclamation Act of 1977. OSM could be losing millions of dollars because of its inability to effectively identify and investigate unreported coal production by the coal industry. Unreported coal production directly affects the amount of money paid into the Abandoned Mine Lands (AML) Fund because the fees are based on production. Additionally, a substantial delinquent AML debt of $33 million is currently outstanding, a good deal of which is owed by companies which according to OSM's records are actively mining.

Mr. James Harris, a former OSM director, testified before another Congressional Committee that "the fee compliance program is functioning effectively, achieving an extremely high level of compliance..." His successor, former acting director Dr. J. Lisle Reed, testified that OSM has been unable to establish whether there is a significant amount of unreported or underreported reclamation fee debt. In reality, Mr. Chairman, OSM has mainly focused its attention on what it has collected (i.e., "known debt") as opposed to the additional fees owed because of unreported or underreported coal production. Despite the testimony by former directors of OSM, the fee compliance program is not functioning effectively or achieving the level of compliance that was intended by the law.

Title IV of the Surface Mining Control and Reclamation Act establishes the requirements of the fee compliance program. Under section 402 of this title, all coal mined in the United States is subject to a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton produced by underground mining operations. By statute, this program remains in effect until 1992 unless extended by an Act of Congress. Coal operators pay these fees and report the tonnage of coal produced each calendar quarter to OSM.

To ensure that operators comply with the requirements of the Act, 32 fee compliance auditors, under the control and direction of OSM's 10 field offices, are responsible for auditing over 9,000 active mining operations at regular intervals to ensure that they have accurately reported their fee liability. To date, OSM reports that it collected about $1.4 billion in AML fees since 1977. However, there is serious question as to whether the projected revenues of $3 billion over the life of the program is sufficient to clean up the pre-1977 abandoned mine sites. In addition, of the $33 million of fee liability debt that has not been collected, the majority is more than 1 year old. Of the outstanding debt, about $29 million has been referred to the

Department's Solicitor's Office for legal action. Mr. Chairman, the AML fee compliance program is nearly half way over, with only another seven years left. In order to assure that sufficient revenue will be generated to cover abandoned mine reclamation costs, OSM must stop dwelling on what it has collected. Instead OSM must focus on ways to improve the identification of unreported and underreported coal production and take necessary enforcement measures to assure that coal producers pay delinquent fee debt.

The Department's Inspector General has cited many of the same weaknesses that I have observed. My testimony will supplement theirs by discussing: 1) the failure of coal operators to report and, consequently, to pay the required reclamation fees for coal production, and 2) the lack of alternative enforcement actions against operators who are delinquent in their AML fees.

### OSM May Be Losing Millions Because of Widespread Unreported AML Fees

Whether the AML fund has lost revenues because of underreported and/or nonreported coal production is an issue that has not received much scrutiny. OSM has not dealt effectively with this concern and has not been successful in determining whether underreporting or non-reporting of AML fees is a significant problem. Mr. Chairman, as a result of my detailed comparisons of coal production data reported to the Energy Information Administration (EIA) of the Department of Energy and that which is reported to OSM, I believe that this Committee can conclude that unreported coal production does in fact exist and should be given more attention by OSM than in the past.

The purpose of the examination was to determine whether significant underreporting and/or non-reporting of coal production is occurring. My examination was a labor intensive, manual comparison of coal production data as reported by individual producing mines to EIA and to OSM. I chose Kentucky for my examination because of the number of mines and the significant amount of coal produced within this State -- nearly 130 million tons each year. To do such a comparison for all mines in all states without computer assistance would be a massive undertaking. Certain adjustments had to be made to the data collected by EIA to assure that we were not comparing apples and oranges when examining coal production data. Attached is a statement of the study methodology.

By regulation, EIA has placed restrictions on the disclosure of data reported by individual entities to other Federal agencies, and OSM has not obtained this detailed data. The EIA information was provided to the Subcommittee, consistent with the Committee's general investigative authority. As required by its own regulations, EIA informed us that the information is considered confidential. The Subcommittee's inquiry addresses the overall question of whether there is significant unreported AML fees. Therefore, for purposes of this hearing, public disclosure of the names of individual entities is not necessary. My testimony does not mention specific operators by name. At this point, I would like to acknowledge the cooperation and assistance of EIA in generating the information necessary for the Subcommittee to conduct its investigation.

Mr. Chairman, I am convinced that OSM is losing millions of dollars in Kentucky alone because coal operators are not accurately reporting all the coal they produce. To conclude that this condition exists, I examined data for 673 mines which were owned or operated by 176 companies. Comparison of coal production for individual mines was based on the Mine Safety and Health Administration's (MSHA) mine identification numbering system, which tracks the existence of coal mines and is the common denominator used by MSHA, EIA and OSM for obtaining coal production statistics. A comparision of calendar year 1983 coal production reported for each Kentucky mine identification number to OSM and EIA indicated that nearly 5 million tons of coal were produced for which operators paid no reclamation fee. Depending on whether production was from surface or underground mines, the unreported fees could range from $741,000 to $1.7 million. If the 673 mines that I examined were representative of the approximately 3,800 actively operating mines in Kentucky, then the total amount of unreported fees is undoubtedly much greater. I believe that if an examination of all Kentucky mines were made, a significant amount of unreported fees would be found.

Let me stress that the 5 million tons of unreported coal production is for one state, for one year and involves only 18% of the active mines in Kentucky. Assuming that this quantity of unreported tons existed each year, then we could extrapolate that for 18% of the mines in Kentucky alone, the AML fund could have lost as much as $12 million over the past seven years.

In addition, some disturbing details emerged pertaining to the individual mines and companies examined:

- Some companies failed to report coal production to OSM that they reported to EIA. For instance, 68 (39%) of the 176 companies did not report production to OSM, although they reported to EIA. According to OSM's April 4, 1985, Mine History Report these company mines were classified by OSM as 1) returning OSM's Coal Production Reclamation fee report but reported no production, 2) inactive mines, 3) mines were not on file or 4) mines did not return OSM's coal production and fee report (non-respondents).

- There are some companies who underreported or did not report their coal production at all who were also delinquent in paying previously reported AML fees. Of the 277 active and delinquent companies still mining in Kentucky, 25 did not report all of their coal production to OSM.

- All mines are not audited by OSM to ascertain whether companies are properly reporting coal production. Of the 673 individual mines examined, 491 (73%) were never audited.

- Of those that were audited about 27% were last audited in 1980. Fee compliance auditors are not auditing all of a given company's mines despite the policy given to field office directors informing them that they should do so. An examination of some recently conducted audits of mines revealed that none of the audits detected the coal tonnage reported to EIA.

Since the MSHA mine identification numbers serve as the basis for establishing the identity of coal mines, one might expect that all of these mine numbers would also appear in OSM's system for fee reporting purposes. During my study, I noted many instances where mines identified by MSHA were not yet included in OSM's information system. An OSM memorandum dated January 23, 1985, identified the same problem, raising the concern that OSM's system was not identifying mines which are known to be responsible for paying reclamation fees. This occurred because OSM did not automatically incorporate quarterly updates of new MSHA mine identification numbers because of errors in the mine data. The data was not entered into the AML information system until errors were corrected. Neither I nor OSM knows how widespread this problem may be, however, unknown sums of money may be lost for the period between when the mine reported to EIA and when OSM first identified the mine as responsible for reclamation fees. OSM has just recently taken the initiative to include all identification numbers, as provided by MSHA, in its information system, with corrections to mine data to be made later.

Another important source of unreported reclamation fees can be derived from coal operators who are known to exist, but for some reason do not return OSM's quarterly production and reclamation form. In the February 1985 report, the Inspector General concluded that audits of those operators who failed to file the quarterly report and pay reclamation fees have been the most productive in identifying unreported fees. However, OSM has not been successful in determining whether operators who fail to file a quarterly report are actively producing coal and are responsible for reclamation fees. Each quarter about 2,000 to 3,000 mines fail to return the quarterly reporting form. Fee compliance auditors previously were responsible for determining the operating status of companies which failed to file the quarterly report, but could not keep abreast of the increasing lists of non-respondents. To address this longstanding problem, OSM awarded a contract to Dun and Bradstreet (D&B) to investigate the operating status of nonrespondent mines. A May 10, 1985, D&B report on 1,053 mines owned or operated by 691 companies revealed that 614 companies (89%) were still in business. As a result of D&B's work, OSM's compliance auditors now should investigate all quarters during which the mines were active but did not file a quarterly return to determine if they produced coal without reporting their reclamation fees.

### OSM is Not Taking Alternative Enforcement Actions Against Operators Who Fail To Pay Delinquent AML Fees

Despite violations of OSM's stated policies and regulations, OSM is not taking action to revoke or suspend permits of delinquent companies. On October 2, 1984, OSM issued a policy directive outlining the procedure for issuing violation notices in order to initiate permit suspension and revocation actions against operators owing delinquent reclamation fees. This procedure implements a new provision of the AML regulations that went into effect on July 5, 1984. The directive required that enforcement action begins once the "violators" list has been prepared identifying operators who have outstanding fees and/or unfiled or incompletely filed reclamation reports for the previous reporting quarters. Once violators are identified, OSM is to notify states so that they may take steps to revoke or suspend the operators' permits. If state regulatory authorities fail to take the required action, then OSM is to begin federal action. Unsurprisingly, OSM has largely ignored this policy directive, and, as a result, few enforcement actions were taken against operators who are delinquent in their AML fees. The use of permit suspension or revocation against operators under the fee compliance program has not been used in part, because they have not even begun to take the first step -- developing the lists of violators as required by the October 2, 1984, directive.

As of April 2, 1985, nearly one year after the amended AML regulations went into effect, only 24 companies nationwide were issued violation notices for nonpayment of delinquent AML fees. The preparation of a policy directive is simply not enough -- OSM must begin to show Congress, the public and the coal industry that it intends to fully carry out its regulations and policies.

OSM habitually justifies its inability to collect delinquent debt on the grounds that many delinquent companies are out of business or bankrupt. However, I believe their premise is in error. To demonstrate, based on OSM's records, I identified 277 companies actively mining in Kentucky that were delinquent in their AML fees. Of the 277 companies, 162 (58%) operated 193 active mines that were delinquent $500 or more. Yet, only 3 companies had been cited for failure to pay AML fees.

Moreover, nationally, $16 million (47%) of the existing $33 million in delinquent fees is owed by operators of over 2,200 active mines. Debt owed by active mines may be even greater than that since many inactive mines that are delinquent in their fees are operated by active companies. This suggests that a significant portion of the outstanding AML debt may be owed by companies still mining, and that, through the use of OSM's permit suspension and revocation authority, the debt may still be collectible. However, OSM must act now since the lifespan of many coal operators is so volatile.

Mr. Chairman, my conclusions are simple and direct:

* The AML fee compliance program is not functioning effectively and achieving the compliance intended by the law. Although OSM is collecting 98% of all known AML fee debt, extensive unreported coal production may be denying the public treasury millions of dollars desperately needed to finance the reclamation of abandoned mine lands;

* Not aggressively pursuing permit revocation and suspension actions against delinquent operators will only exacerbate further growth of the AML debt; and

* OSM's failure to identify and collect reclamation fees from all coal mining operations provides an unfair competitive advantage to those who do pay their fees. The fee compliance program now in existence at OSM at best rewards those who do not comply with the law.

This concludes my testimony. I will try to answer any questions that you may have.

## APPENDIX

### Methodology for Verifying Coal Production Reported to OSM

Coal operators are required to report coal production statistics to the Mine Safety and Health Administration (MSHA) and the Energy Information Administration (EIA) of the Department of Energy. Under the Federal Coal Mine Health and Safety Act of 1969 and the Federal Metal and Nonmetallic Mine Safety Act, coal operators are required to file reports pertaining to accidents, occupational injuries and illnesses, as well as employment and coal production data with MSHA. Similarly, EIA collects and disseminates comprehensive information about coal production as required by the Federal Energy Administration Act of 1974. Pursuant to the Surface Mining Control and Reclamation Act of 1977, the Office of Surface Mining (OSM) of the Department of the Interior requires coal operators to report coal produced for sale for purposes of assessing a tax that finances the reclamation of mine sites abandoned prior to the enactment of the 1977 law.

Before coal production operations begin, MSHA assigns each mine with a 7-digit identification number. This number serves as the basis for identifying both surface and underground mines within a state and county and is the basis on which both OSM and EIA collect information about coal production. The MSHA identification numbering system identifies type of mine; whether it is a surface or underground mine; as well as the companies responsible for the individual mines. It is on this basis that

OSM identifies coal operators responsible for payment of reclamation fees. MSHA provides quarterly updates of new mines and changes in mine status to the OSM database which is maintained by the Bureau of Mines of the Department of the Interior.

EIA annually collects coal production data from coal mining companies for each mining operation, i.e. mine and/or preparation plant and/or tipple where coal production exceeds 10,000 or more tons during the calendar year. EIA's definition of coal production includes what companies stockpile for future sale as well as what is produced for immediate sale. Although EIA's definition is not synonymous with OSM's definition of coal production (which excludes coal produced and stockpiled) EIA was able to segregate out the amount of coal production reported as stockpiled for purposes of comparing coal production reported to OSM and EIA.

EIA officials informed Committee staff that because of the Department of Energy's restriction on the disclosure of individually identifiable information, they feel that the coal production data it collects is accurate and valid for statistical purposes. Accordingly, EIA officials also stated that coal operators have a tendency to truthfully report production data when they know that what they report will not be subject to enforcement scrutiny. The most currently available EIA coal production statistics is for calendar year 1983.

OSM, at the request of the Subcommittee on Environment, Energy and Natural Resources prepared a computer tape which contained all coal mine production reported to OSM nationwide based on MSHA identification numbers. OSM provided this computer tape to EIA so that EIA could compare coal production reported by MSHA mine identification numbers to EIA and OSM for calendar year 1983. EIA's printouts excluded that portion of reported coal production that was stockpiled by coal operators. Considering the large number of mines which were involved in the comparison, it was obvious that the Subcommittee examination had to be limited. Therefore, the examination was limited to companies who owned/operated mines within the State of Kentucky. Kentucky was selected because it produces more coal than any other state.

A mine by mine analysis was necessary since a comparison of production reported to EIA and OSM on the basis of state totals alone would be deceptive. State totals include mines reporting to OSM regardless of the tons of coal produced, whereas those reporting to EIA are those mines that annually produced 10,000 or more tons of coal. Therefore, total EIA production is understated compared to that reported to OSM.

Mines included for review were initially selected on the basis of all instances where mines reported coal production to EIA and none to OSM. According to EIA officials, comparing production data for individual mines is misleading since companies frequently report production of one mine under a different MSHA mine identification number. Therefore, to determine whether unreported coal production existed, it was necessary to identify and compare production statistics for all mines owned/operated by a particular company. The examination ultimately involved a comparison of 673 individual mine identification numbers which were owned/operated by 176 companies.

To identify all mines owned/operated by the Kentucky companies, OSM's Company Response History Report dated, November 11, 1984, was used. This report identifies all companies nationwide that are responsible for all assigned MSHA mine numbers by individual state. The report identifies the location of each mine by county level as well as provides information with respect to reclamation fee reporting status, the number of audits conducted and the date of the last audit (see example page of report attached).

Identifying and comparing production for all mines owned/operated by a particular company provided sufficient basis to conclude whether coal production was unreported to OSM for calendar year 1983. In some cases it was difficult to determine what companies owned/operated a particular mine. For these instances, a list was provided to EIA to determine what company owned/operated the mine in question for calendar year 1983. After all known MSHA mine identification numbers had been assigned to the appropriate company who reportedly owned/operated the mine, based on the printouts prepared by EIA for the Subcommittee, reported coal production tonnage was compared between the two agencies for variances.

Analyses of reported production statistics disclosed a net underreporting of 4.9 million tons. Because of the problem noted above where mine production is sometime reported under a different mine identification, it was difficult to determine in some cases whether coal production was from a surface or underground mine. Therefore, it was necessary to provide a range of the value of the unreported reclamation fees -- the lower amount is all production from underground mines and the higher amount is all production from surface mines.

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PGM: LF7549/LF754901            O F F I C E   O F   S U R F A C E   M I N I N G              REPORT NO. LF7-549

RUN DATE 11/08/84                          COMPANY RESPONSE HISTORY REPORT                                    PAGE  729
                                                     774 THRU 834

STATE:    KENTUCKY           (21)              FIELD OFFICE 04

OPERATOR/MINE ID SEQ TYPE      QUARTERS REQUESTED
                    COUNTY      774 781 782 783 784 791 792 793 794 801 802 803 804 811 812 813 814 821 822 823 824 831 832 833 834

# B L T D OF VIRGINIA            R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R
 1510531  01  S      (133)

A & A COAL CO                    I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 150232   01  U      (131)

A & A CONSTR. CO                 X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   -   -   R   R
 1512780  01  S      (133)

A & A FUEL INC                   Z   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1509625  01  S      (195)

                               DATE OF LAST AUDIT: 06/13/84    NUMBER OF AUDITS: 999    AUDIT STATUS CODE:  1
A & B COAL CO INC                R   Z   Z   Z   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1509458  01  S      (183)

A & B CONSTRUCTION               X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X   X
 1500001  01  S      (119)

A & C COAL CO                    Z   Z   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1507117  01  S      (195)

A & C MINING CO INC              I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1508801  01  U      (193)

                               DATE OF LAST AUDIT: 09/30/81    NUMBER OF AUDITS:   1    AUDIT STATUS CODE:
A & E COAL CO INC                R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   R   Z   I   I   I   I   I   I   I   I
 1507628  01  U      (133)

                               DATE OF LAST AUDIT: 09/30/82    NUMBER OF AUDITS:   1    AUDIT STATUS CODE:
A & E COAL CO INC                X   X   X   X   X   X   X   X   X   X   X   X   X   X   Z   R   R   R   R   R   Z   Z   Z   Z   R
 1512649  01  U      (133)

A & J COAL CO INC                X   X   X   X   X   X   -   Z   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1511216  01  U      (121)

A & K COAL CO                    R  04  04  04  04  04  04  04  04   -   -   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1509597  01  U      (133)

A & M COAL CO                    -   Z   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I   I
 1507666  01  U      (133)

  REPORT CODES : '-' (DASH) NON-RESPONDENT  'R' RESPONDED,PAID  'Z' RESPONDED,ZERO REPORT  '$' RESPONDED,OWES FEES,UNBILLED
                 '99'(NUMBER) BILL STATUS CODE FOR BILLED AMOUNT
                 'X' MINE NOT ON FILE  'I' MINE INACTIVE  'N' NOT A MINE  'E' MINE EXEMPT
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Mr. **Synar**. I don't have any questions.

Does the minority have any questions?

Mr. **Tapper**. Just a couple.

Mr. **Synar**. Go right ahead.

Mr. **Tapper**. Mr. Esposito, you mentioned your comparison of the 1983 coal production in Kentucky reported to EIA with the production figures reported to OSM. Your comparison involved 18 percent of the active mines in one State, Kentucky; is that correct?

Mr. **Esposito**. Yes, sir.

Mr. **Tapper**. You also identify a problem with operators who are producing but fail to file their quarterly reports?

Mr. **Esposito**. Yes.

Mr. **Tapper**. Apparently, OSM has utilized Dun & Bradstreet to identify a vast majority of those nonreporting operators who are still in business. Would you say this effort has been a success?

Mr. **Esposito**. As it relates to the identification of coal operators active status; yes.

Mr. **Tapper**. And you would have them follow that up with what kind of action?

Mr. **Esposito**. I would request of OSM that they instruct its fee compliance auditors to look at all the active nonrespondent companies; that is still in business. They should go back and audit the production for the period that they were nonrespondents. Basically what they should do is find out if they were producing during that period and assess the reclamation fee as required by the law.

Mr. **Tapper**. Do you think that with the current staffing levels there they would have the resources to do that kind of undertaking?

Mr. **Esposito**. Well, I don't know how many people are necessary, but I believe that you surely need more than 30 people out there to monitor the coal industry in coal producing States. There are many, many mines. I think from the beginning of time there was about 22,000 mines that were in OSM's system, and many of those mines have not been audited or have not received any scrutiny as of yet. A lot of these mines have come into the system, they have produced coal, and they left; and they have never been audited.

Mr. **Tapper**. You state in your testimony that developing a list of violators would be a first step in enforcing AML delinquencies by permit revocation or suspension; is that correct?

Mr. **Esposito**. Yes.

Mr. **Tapper**. You also stated that you were able to identify 277 companies active in Kentucky which were delinquent in AML fees. But as I understand it, one of the problems with identifying those kinds of operators is that many companies have different names as do the principals in those companies. How were you able to identify those conclusively?

Mr. **Esposito**. I used OSM records, and looked at the status of that particular mine and company associated with that mine; and determined if the mines were active or inactive. The active and inactive status of any given mine is OSM's information. Active and inactive mines basically come from two sources: from the Mine Safety and Health Administration [MSHA] who updates mine status; and from fee compliance officers when they know about a change in the mine's status.

For example, the records could show that a particular mine was active, but a fee compliance officer in the field knows that that mine has been closed or there is no production from it; and consequently, they can input OSM's system and change the status of those mines. So I feel that based on what OSM does and what it gets from MSHA that this may be a fair representation of the status of companies and mines.

Mr. **Tapper**. Just one more question, Mr. Chairman.

In your opinion, if the IG's recommendations are fully implemented by OSM, would the AML Program be significantly improved?

Mr. **Esposito**. It is on its way to, yes.

Mr. **Tapper**. So your opinion is it is on its way?

Mr. **Esposito**. It is on its way. I would like to qualify that, though. The fact is that OSM says it is going to do an awful lot of things; however, the true—I guess the true evidence of whether it is going to be on its way can only be determined down the road sometime.

I am a person, by the very nature of my education and training, that while you can tell me what you are going to do, you must also prove to me that you have done it. And once you show me, then I will believe you.

Mr. **Tapper**. Are you from Missouri?

Mr. **Esposito**. No. [Laughter.]

Mr. **Tapper**. Thank you, Mr. Chairman.

Mr. **Synar**. Thank you very much.

Pat, again thank you for your excellent work, and we do appreciate the tremendous effort that you have put forward.

Mr. **Esposito**. It has been a pleasure to work for you and the subcommittee, and I enjoyed every minute of it.

Mr. **Synar**. Thank you.

Mr. **Esposito**. Thank you, sir.

Mr. **Synar**. Our final panel of witnesses will be Mr. Jed Christensen, Acting Director of the Office of Surface Mining. Today, he will be accompanied by Carl Close, Robert Ewing, Phyllis Thompson, and Christopher Cannon.

Will any of those be testifying or answering any questions?

Mr. **Christensen**. Yes, Mr. Chairman, some of them will. Do you want me to go ahead and give my opening statement, and ask them to come forward——

Mr. **Synar**. Let's swear everybody in right now. How is that?

Do any of you have objections to being sworn in?

[Witnesses sworn.]

Mr. **Synar**. Welcome. We look forward to your testimony. Your entire testimony will be made a part of the record. At this time we would ask you to summarize. Go right ahead.

## STATEMENT OF JED CHRISTENSEN, ACTING DIRECTOR, OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CARL CLOSE, ACTING ASSISTANT DIRECTOR FOR PROGRAM OPERATIONS AND INSPECTION; ROBERT EWING, ASSISTANT DIRECTOR, OFFICE OF FINANCE AND ACCOUNTING; PHYLLIS THOMPSON, CHIEF, DIVISION OF ABANDONED MINE LANDS; AND CHRISTOPHER CANNON, ASSOCIATE SOLICITOR

Mr. CHRISTENSEN. Thank you, Mr. Chairman.

First, I would like to tell the committee that I appreciate this opportunity to come and speak to you and to your committee, and I appreciate also all the work that you have done.

I might just divert for one moment and say that Pat Esposito has been an excellent worker there. In fact, he is one of the hardest working men I have seen in our building. And I hope that the OSM and BIA employees in that building have watched his example and will be willing to work as hard as he has.

So, well, goodbye to Pat.

Mr. SYNAR. Let me assure you that we have an even harder working replacement on his way. [Laughter.]

Mr. CHRISTENSEN. I might also add that he had his office right across the hall from the Xerox machine, and with him gone I think our Xerox costs are going to decrease dramatically. [Laughter.]

Mr. Chairman, I think the testimony today has been very enlightening, and I believe that we all share the same goal; and that is, improving the Office of Surface Mining's record on collecting reclamation fees. Doing that is an urgent priority of myself and the Secretary, as well as this committee. And I believe, also, that the professional managers in the Bureau of OSM are also concerned about that very same goal.

We are certainly not here to congratulate ourselves on what has been done, but to challenge ourselves to finish what has not been done—the collection of over $30 million in delinquent fees. It is not an easy job, this challenge to collect all that is owed. We still have to cure operational and organizational deficiencies, which we freely admit. We will do that, and we have taken steps to do that.

To help us sustain and quicken our pace, I urge the continued constructive recommendations and support from this committee to help us get all the reliable information we need to verify who is producing coal, who is not reporting tonnages to us and, thus, evading their responsibilities.

I would also like to commend your efforts to date, Mr. Chairman, and request continued help in overcoming certain legal constraints needed to secure IRS and DOE information that we are now barred from getting; information that will strengthen our chances to collect more of the debt that is owed to the Federal Government in a timely manner.

We are not implying that if we had all that information today our collection totals would automatically soar. I believe that is unrealistic given the internal problems that I have to resolve. Thus, it is a sobering fact that a number of delinquent coal operators are bankrupt, making full collection impossible. However, we are at a critical threshold where we can stem further losses to the AML fund if we had more accurate reporting information. We cannot afford to bypass this opportunity.

Mr. Chairman, with your continued urging and support, I am confident that this hearing will result in a sense that OSM is positioning itself through its present and future commitments to meet the recommendations of the committee, conform with the administration's debt management policy, and restore the public's confidence in our resolve to collect debts.

I might just note that between January 1978 and last March $1.5 billion has been deposited in the AML fund. The collection rate, as has been noted, has been good on known information, and it is a good record. But we recognize that the uncollected amount is a significant number of dollars. We intend to collect that money and have undertaken numerous improvements in our fee collection program which I would like to outline very quickly.

First of all, we have published regulations making timely and accurate reporting and fee payment a condition of permit approval. OSM is requiring the denial of mining permits resulting in payments of over $7.5 million to date. We have also blocked Federal coal purchase contracts to operators who have not paid their fees. OSM is also actively blocking business loans that people try to obtain through the SBA when they have delinquent fees. We are referring information on debtors to credit bureaus and the IRS.

Penalty and administrative charges allowable under the Debt Collection Act are being imposed. By this fall, we expect to have a computer system capable of identifying and linking principal owners of coal companies who shield themselves amid corporate layers to avoid correcting violations and paying fees.

We are also working actively with DOE's Energy Information Administration to try to obtain their data that they use to compare with ours. We are actively responding, also, I might add, to the IG's recommendations.

I think that one other thing I would like to add is that we want to make sure that we utilize our auditors' time fully for the collection of AML fees. We have redefined their duties and we are in the process of training them in auditing procedures. I believe this training will be strengthened when we get a new audit procedures manual to them also to follow. As an example of our auditors' work, in a recent 12-month period ending March 1985, they found close to $12 million in fees were due, and $400,000 had been overpaid.

We have evaluated our organizational structure and just completed the study. We expect to implement those changes before October 1.

In addition, I might suggest that OSM has a vested interest in collecting every available dollar because it goes into a dedicated fund—something that is kind of rare in the Federal Government—that goes specifically to reclaiming lands, and that is really the only money that is available for that purpose.

We have a considerable way to go to make OSM fully successful in collecting fees, and I will be the first to admit that. I believe through this hearing today and the constructive views of the committee and witnesses, we will continue to improve our collection efforts.

Thank you, Mr. Chairman.

Mr. SYNAR. Thank you very much, Mr. Christensen.

[The prepared statement of Mr. Christensen follows:]

# STATEMENT OF JED CHRISTENSEN
ACTING DIRECTOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
JULY 11, 1985

Thank you, Mr. Chairman, for this opportunity to appear before you today to explain the reclamation fee compliance program established by Title IV of the Surface Mining Control and Reclamation Act of 1977, and administered by the Office of Surface Mining. In addition, I am prepared to address the operation of the fee collection program, and management initiatives resulting from studies by the Department of the Interior's Inspector General and our own program evaluation staff.

The reclamation fee levied under the Act is required to be paid on every ton of coal produced by regulated operators. Receipts are deposited in the Abandoned Mine Land (AML) Reclamation Fund for the primary purpose of reclaiming land and water resources adversely affected by past coal mining activities which pose a threat to the public health and safety. Between January 1978, when the first payments were due, and March 31, 1985, $1,484,948,141.00 has been deposited in the Fund. Over the past seven years we have collected 97.8 percent of all monies known to be due the Federal Government, while the remainder is in the collection process.

We enforce the AML reporting and payment requirements of the Act by taking appropriate actions against non-compliant operators. These actions include:

- requiring the denial of mining permits, which has resulted in payments of over $7.5 million, and blocking Federal coal purchase contracts to operators with unpaid fees, both of which we have done since 1982;
- cooperating with the Small Business Administration's business loan program to increase the incentives to pay fees;
- referring information on debtors to credit bureaus and the Internal Revenue Service;
- requiring payments to us, instead of to an operator, under any Federal contract the operator may have; and
- requiring States, through our July 1984 regulations, to make timely and accurate reporting and payment a permit condition.

In addition, in 1984 we asked the Office of Management and Budget (OMB) and the Department of the Treasury to include cases on which we have court-rendered judgments in the 1986 pilot Federal tax offset program authorized by the Deficit Reduction Act.

For enforcement purposes against AML reporting and payment violations, we are developing an automated system for identifying and linking principals and major stockholders appearing in multiple coal operations. We expect this system to be operational by October 1, 1985.

In 1982 we awarded a contract to facilitate collections. The contractor has collected $1.2 million to date and has prepared the documentation necessary to facilitate the final disposition of $1.5 million in uncollectible accounts. Through mid-1984 our costs under the contract for elimination of each dollar of debt, through both collection and writeoff, was approximately eight cents. In July 1984 we issued regulations implementing provisions of the Debt Collection Act, including recovery of costs for collection through pass-through of those costs to the debtor.

In December 1984, we announced a proposed contract in the Commerce Business Daily for a more extensive AML debt management program, again based on full cost recovery. This contract will replace an existing contract which expires in December. The proposal includes not only pre-litigation collection services we now receive, but also requires additional new services in the form of:

1) a system for tracking AML enforcement and litigation actions associated with reclamation fee violations;

2) assistance in locating debtors;

3) financial analysis of a debtor's situation including identification of assets and determination of net worth;

4) completed documents needed to forward cases for litigation or justify writeoffs.

Although ours is not a credit program, we have taken steps to ensure our collection function will be in conformance with the Administration's policy on debt management, as set forth in the recently-issued OMB Circular A-129. We have incorporated all applicable requirements of the Circular into our Statement of Work for the new contract.

Statistics available to us indicate we are presently collecting fees on better than 99 percent of reported coal production. Earlier this year we sent a computer tape, containing coal tonnage information reported to us by operators, in calendar year 1983, to the Department of Energy's Energy Information Administration (EIA)--considered by many to be the Federal Government's definitive source of national coal production information. They compared our information with their data base for 1983--the latest year for which they have annual statistics available. With 1982 stockpiles included, but 1983 stockpiles excluded, the EIA production data was 8.7 million tons greater than the OSM data. Assuming OSM and EIA are using consistent operator data, approximately 782 million tons had been reported to them, while 774 million tons had been reported to us, a discrepancy of only 1 percent.

Because we are constrained on receipt of third-party information, we have initiated other means to obtain additional information to verify our production data. We have taken the following steps:

o established regulations in 1984 requiring all surface coal mining operations--including preparation plants, support facilities, and loading facilities--to keep and make available records of coal produced, used, bought, or sold;

- established regulations in 1984 to provide access to records kept by coal brokers and transport facilities;

- developed procedures for conducting on-site inspection of third-party records allowable under our 1984 regulations; and

- requested in January 1985, a toll-free number for the use of callers concerned about the issuance of pending mining permits and federal contracts and loans. The toll-free number is also for individuals wishing to notify us of possible instances of non-reporting and under-reporting. The number will be included in the National Directory of 800 numbers. This service is scheduled to be operational on July 19, 1985.

To fully enforce the requirements of SMCRA, Title IV, we use financial, operational, organizational, and locational information, obtained or purchased from various sources, in our AML regulatory, enforcement, and collection activities. Contractors provide us regular reports on companies that have filed for bankruptcy, have ceased operating, or have been sold or merged. Contractors investigate all non-responding operators and report on whether they should, indeed, have responded based on their current operational status. We have access to commercially developed, automated files which identify debtor companies' current Federal grants and contracts, on which we may be able to be paid in lieu of the company. We can obtain a family tree of the companies involved showing the intra-business relationships from the ultimate parent down through subsidiaries and even to branches. The OSM is currently pursuing regulation changes in cooperation with EIA to obtain access to their coal production information.

Audits and related investigations are our primary means for determining that all coal production has been reported to us and that all money owed has been paid. To ensure our auditors have the maximum amount of time available to perform audits, we have restructured their duties. Further, in response to a 1983 internal control study, we initiated annual meetings for field personnel on program policies, procedures, and problems. We also recognized at that time that some problems stemmed from inadequate training and education. Accordingly, we closely examined and redefined the requirements of auditor positions, and established specific education and experience requirements for auditors. All new auditors must meet these requirements. The present audit staff who lack this education are being encouraged to obtain appropriate supplemental education. We also completed a detailed program review manual for use by future audit supervisors in evaluating the performance of auditors, and will complete, by November 1985, a comprehensive audit procedures manual.

To further address the overall issue of auditing, we have developed an automated audit information data base through which we can monitor the number of audits conducted, time devoted to audits, and dollars identified either as additional fees due or excess fees to be refunded. For the 12 months ending March 1985, auditors determined that $11.7 million in additional fees were due and $400,000 in reclamation fees had been overpaid. These statistics are reflected in the overall collection statistics I referred to earlier in my testimony. Auditors currently return to the Fund approximately $8.70 for every dollar we spend on them. We are building an audit assessment model designed to indicate whether an operator will be a likely candidate for audit. The model will be similar to the process used by the Internal Revenue Service to select taxpayer for audits.

In 1985, the Department of the Interior's Inspector General made a number of recommendations for improving fee collection performance. Of these recommendations, we have completed action on issues designed to improve our capability to uniformly obtain information from third-party sources and estimate production in the absence of books and records. We have developed performance standards for field managers to increase technical supervision, and have developed training requirements which must be completed by those individuals who want to qualify for an auditor position. Work is underway on actions designed to help us more effectively manage audit assignments and quality control of audit work, including preparation of an annual audit workplan, an audit tracking and follow-up system, and guidance documents to standardize audit performance. In addition, we are developing procedures to more effectively obtain and utilize information on coal production and purchases from other Federal agencies. The Inspector General identified five issues concerning management organization, which are currently being incorporated in a program evaluation study now under final management review. This study addresses the issue of line authority over auditors, audit supervisors, and field support staff.

We recognize the importance of identifying and collecting all AML fees owed. We project approximately $3 billion will be paid by the coal industry over the fifteen-year life of the fee. This will be sufficient to cover currently known Priority I & II AML projects, those required to protect public health & safety in accordance with section 403 of the Act.

We are working diligently to build a sound reclamation fee collection system. Our collections record based on current methods has been good. We are certainly not free of the problems, however, the initiatives I have discussed demonstrate our commitment toward improvement. I would be pleased at this time to answer any questions you may have.

Mr. **Synar**. We will proceed under the 5-minute rule, and I will start.

Let's get something out of the way I know that you know I was going to ask about, which has to do with the money for the abandoned mine sites being held hostage in Oklahoma. This is day 455. OSM is holding more than $1 million for reclamation of sites in Oklahoma to be released when OSM determines Oklahoma has "demonstrated acceptable progress in correcting deficiencies in its regulatory program."

The law provides that AML funds are to be withheld from a State which does not have an approved regulatory program, but OSM has repeatedly and publicly acknowledged that Oklahoma has an approved regulatory program. Let me repeat that—has an approved regulatory program.

At this time I would ask unanimous consent that correspondence with Mr. Christensen on this point be included in the record.

[The correspondence follows:]

MIKE SYNAR, OKLAHOMA, CHAIRMAN
ROBERT E. WISE, JR., WEST VIRGINIA
BARBARA BOXER, CALIFORNIA
JOE KOLTER, PENNSYLVANIA
EDOLPHUS TOWNS, NEW YORK
ALBERT BUSTAMANTE, TEXAS

WILLIAM F. CLINGER, JR., PENNSYLVANIA
THOMAS D. (TOM) DELAY, TEXAS
RICHARD ARMEY, TEXAS
JOHN MILLER, WASHINGTON

MAJORITY—[illegible]
MINORITY—[illegible]

NINETY-NINTH CONGRESS
Congress of the United States
House of Representatives
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-371-B-C
WASHINGTON, DC 20515

May 1, 1985

Honorable Jed Christensen
Acting Director
Office of Surface Mining
Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240

Dear Mr. Christensen:

As you undertake the difficult task of directing the Office of Surface Mining, I would like to call to your attention a concern involving the State of Oklahoma and urge you to act quickly to resolve it.

As I have stated on many occasions, I have made a conscious effort not to inappropriately interfere in the specific regulatory decisions which the Department must make about Oklahoma, and I will continue to avoid such action. However, I feel strongly that the Department is acting outside the legal authority contained in Title IV of the Surface Mining Control and Reclamation Act in withholding AML funds from the State of Oklahoma.

Oklahoma is currently operating with an approved state program, except for the enforcement and inspection aspects of its program. That fact is clear from the Federal Register notice outlining the role that the Federal government currently has in the Oklahoma program, as well as the Department's responses to my questions at the March 21, 1985 hearing of the Subcommittee on Environment, Energy and Natural Resources. Section 405(c) of the Surface Mining Act provides the "The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act." Since Oklahoma has an approved State regulatory program, I can find no legal basis for the decision to withhold AML funds from the State. Departmental officials have defended the decision to withhold the funds on the ground that the regulations provided authority to do so. (See transcript of March 21, 1985 hearings.)

Even if such a position were sound legally, it certainly is not sound from a practical standpoint. In the first place, the Title IV program is administered by the Oklahoma Department of Mines. Since different personnel are responsible for administering the two programs, I do not believe that withholding funds from one program is a very effective incentive for the personnel involved in the other problem to make improvements.

Second, it is my understanding that this is a good time to undertake reclamation at a cheaper price because the coal industry is currently facing difficult economic times in Oklahoma. Consequently, I understand that the Oklahoma Conservation Commission is able to find contractors to do reclamation work at much better rates than they have had to pay when business was stronger. So, from a cost/benefit standpoint, it makes more sense to do the reclamation now.

For the reasons outlined above, I strongly urge you to act promptly to provide the AML funds due to Oklahoma. In my view, the Department, by withholding AML funds without legal justification, is needlessly endangering the citizens of Oklahoma who live near sites identified as affecting health and safety. If you decide to continue with the Department's previous position, I would appreciate receiving a statement of the specific legal justification for the position taken by the Department.

Sincerely,

Mike

MIKE SYNAR
Chairman

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

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TIME
SUBCOMMITTEE ON ENVIRONMENT,
ENERGY & NATURAL RESOURCES

MAY 20 1985

Honorable Mike Synar
House of Representatives
Washington, D.C. 20515

Dear Mr. Synar:

Thank you for your May 1, 1985 letter concerning the Office of Surface Mining's (OSM) policy on providing funds to the Oklahoma Conservation Commission (OCC) for initiation of new Abandoned Mine Land (AML) reclamation projects.

On April 12, 1984, OSM published in the Federal Register a notice of suspension of the Oklahoma Department of Mine's (ODM) authority to administer the inspection and enforcement requirements of the Oklahoma program. That notice also stated that no additional funds would be provided to the State for the initiation of new projects under the State's approved AML program pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA).

On May 1, 1985, OSM renewed Oklahoma's AML administrative grant in the amount of $614,608.00. This continued funding allows the State to proceed with ongoing planning and design work and ensures that existing OCC staff will not be adversely affected. During FY 1984, the Director also approved Oklahoma's expenditure of $1,330,647.00 on two high-priority State projects. Applications for five other projects are being kept on file with OSM. As the ODM effectively implements changes to the regulatory program to resolve identified problems, OSM will reevaluate the funding arrangement with OCC.

OSM specified in the April 12, 1984 Federal Register notice that while no additional grant funds would be provided for initiation of new AML projects, the Director would continue to review the status of uninitiated high-priority proposed projects. The two reclamation projects funded by OSM in July 1984 were sites which posed an immediate threat to the citizens of Oklahoma. It is OSM's continuing policy to give these types of projects the necessary attention.

Under OSM's regulations for State Reclamation Grants, 30 CFR Part 886, all individual grant applications are subject to the Director's approval and the decision to fund new projects in Oklahoma is within the Director's broad discretion. OSM's decisions on individual grant applications for specific projects in no way jeopardize Oklahoma's abandoned mine land reclamation program. This approach, however, does reflect Congressional intention that the benefits of a State's Title IV reclamation program be tied to the State's regulatory responsibilities under Title V.

Particularly pertinent here is the following language from the Report of the House Appropriations Committee on the Department of the Interior and Related Agencies Appropriation Bill, 1985:

> The Committee supports the OSM decision to establish a Federal presence in Oklahoma and Tennessee; deficiencies in those programs certainly call for this action. The Committee is concerned however that OSM try to avoid situations such as occurred in Tennessee which elected to give up the entire regulatory program to the Federal government. In the face of an inadequate Tennessee regulatory program, OSM continued to make reclamation funds available, thus taking away an incentive for Tennessee to maintain a strong regulatory program. Section 405(c) of the Surface Mining Control and Reclamation Act establishes a link between regulatory programs and reclamation programs. According to the Act, "The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to Section 503 of this Act." A more aggressive attitude by OSM in withholding reclamation grants may encourage States to run better enforcement programs. (p. 39) (emphasis in original)

I share your concerns about Oklahoma's regulatory and abandoned mine land reclamation programs and will work with the State and you to encourage the full restoration of both. To increase OSM's assistance and emphasis on resolving Oklahoma's problems, I have asked Raymond Lowrie, newly appointed Deputy Assistant Director based in Denver, to spend the time and resources necessary to help the State regain its inspection and enforcement authority. He will work directly with Gayle Townley and the Governor's office in this effort. I will keep you informed of our progress. Should you have additional questions or concerns on this or other issues, please feel free to communicate with me.

Sincerely,

Jed D. Christensen

Acting Director

Mr. SYNAR. The response to my letter sidesteps the specific statutory points. From what I gather, this matter is really being decided on policy grounds and not legal grounds. Therefore, I want to talk to you for a few minutes about policy, for what it is worth.

First of all, has your special assistant, Jack Hammond, talked to you about this matter?

Mr. CHRISTENSEN. Yes, sir.

Mr. SYNAR. Are you aware that in my district alone over the last 6 years five people, including a 4-year-old girl and a 2½-year-old, died in accidents in unreclaimed sites?

Mr. CHRISTENSEN. No, sir.

Mr. SYNAR. Well, they have.

I would ask unanimous consent at this time to enter into the record relevant articles regarding those accidents that we know have occurred, and have them included in the record.

[The articles follow:]

Claremore
Daily Progress
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WEDNESDAY, APRIL 14, 1982 CLAREMORE, OKLAHOMA
3 SECTIONS 30 PAGES 25¢

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# Rescue efforts in vain, pit claims Oologah tot

BY PAT REEDER
**Progress News Editors**

Several hours of intense efforts to revive a tiny drowning victim Tuesday afternoon proved futile.

Resuscitation measures did not cease from the time 2½-year-old Donald Phillip Binkham was raised from the cold waters of a coal pit behind his rural Oologah residence — even after he was airlifted to a Tulsa hospital.

The struggle ended after 6:30 p.m., more than three hours after his mother had discovered him missing.

"Many cold-water drowning victims can be saved," said Jim Harris Oologah Lake Corps of Engineers park ranger, one of those who battled to save the life of the son of Rev. and Mrs. Donald Binkham.

The tot, who was born Nov. 6, 1979, was the son of the pastor of Zion Hill Free Will Baptist Church. The family lives in a mobile home next to the church, four miles west and a quarter mile north of the Oklahoma 88 and U.S. 169 junction at Oologah.

Funeral arrangements are incomplete.

Called to the scene by the Rogers County Sheriff's office, Oologah Lake Corps of Engineers Rangers Harris and Preston Hunter, accompanied by Oklahoma Highway Patrol Lake Patrolman Mike Cox, recovered the tot from deep, cold water of the pits, several hundred yards behind the Binkham's home.

Having participated in a safety meeting within the last six months regarding successful resuscitation of cold water drowning victims, Harris and Hunter started resuscitaion measures immediately.

"We are proud of their efforts, despite the end results," Jay Jones, Oologah Lake project manager, said today.

Dragging operations started shortly after the sheriff's office was summoned at 2:37 p.m., Rogers County Undersheriff Jack Tanner said.

Contacted after the mother noticed the tot was missing, Tanner said Mrs. Binkham had called for the youngster. She saw his dog, which was seldom away from his side, coming from the coal pit area, his coat wet.

Tanner was joined at the scene by Deputies Don Hudson and Dean Wells.

From the moment the child was brought into the boat, Harris said he and Hunter administered mouth to mouth resuscitation, unceasinging, until medics with Collinsville Ambulanace Service arrived. He said they were assisted by Tiny Hurd, former Claremore ambulance attendant, who was at the scene.

"We didn't know how long he had been missing or how long he had been in the water," Harris said. "We feel like it is better to try and fail, than not try at all."

When the Life Flight helicopter arrived, attendants said there was some response.

Rescuers were optimistic through the hours of revival efforts, Harris said, because of the success rate of reviving cold water drowning victims.

"About two-thirds of the victims resuscitated successfully are under 3½-years," said the ranger, who is also a cardiopulminary resuscitation instructor.

He explained the human diving reflex — when cold water hits the victim in the face, blood and oxygen are sent to the brain, heart and lungs — many times resulting in little or no brain damage for the revived

(Please See RESCUE Page 3A)

## Rescue...

(Continued From Page 1)

victim.

Harris said survival depends on four basic factors — three of those were in Donald's favor.

One of the factors is how long the victim has been under water — "We didn't know for sure, it could have been a hour to two hours," the ranger said.

Another factor is water temperature. Anything under 70 degrees adds to the success. "He was at the bottom and it was really cold," according to Harris.

Age is one of the most imporatant factors in the survival rate, "the younger the better."

A fourth factor is "how well reacuers do their job.

"Sometime ago the Corps instituted a basic first aid and CPR program ... everyone has it," said Harris, who never faltered in his efforts to make this rescue a success story.

## Youngster Dies After Falling Into Strip Pit

*World's Own Service*

CLAREMORE — A Baptist preacher's young son who fell into a strip pit filled with water Tuesday while playing with his dog later was pronounced dead at Hillcrest Medical Center, hospital officials said.

Dead is Donald Phillip Dickham, 2½, son of Mr. and Mrs. Donald Dickham. Dickham is the Zion Hill Freewill Baptist Church minister.

TULSA WORLD 4/14/82

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4/14/82 THE TULSA TRIBUNE

# Boy dies from fall in waters of coal pit

**Tribune State Staff**

OOLOGAH — A 2½-year-old boy died Tuesday evening, about two hours after lake patrolmen pulled him from a flooded coal pit where he apparently drowned while playing with his dog 4.5 miles northwest of town, authorities said.

Lake patrolman Lt. Bill Dunlap said Donald Phillip Bickham was found in 20 feet of water in the abandoned coal pit at 4:10 p.m., two hours and 40 minutes after his mother notified Rogers County sheriff's deputies he was missing.

The boy was revived briefly by rescuers and medical teams from Tulsa Life Flight and the Collinsville ambulance service, but died about 6:20 p.m. at Hillcrest Medical Center in Tulsa, Dunlap said.

Dunlap said the child's mother, whose husband, the Rev. Don Bickham, is a Baptist minister, notified county deputies about 1:30 p.m. after she was unable to find her son, who had been playing with the family dog in the back yard of their home.

Mrs. Bickham suspected the child had fallen in the coal pit after the dog, a large Collie who followed the boy everywhere, returned dripping wet to the house when she called him, the patrolman said.

Area residents said the pit has been there at least 50 years and Dunlap said the company which dug it probably is no longer in business.

Rogers County officials said there are numerous abandoned coal pits in the area, which were left for fishing ponds or water holes in the days before coal companies were required to refill them with dirt.

Another child drowned last year in another abandoned pit in the Blue Creek area, a dispatcher said.

# The Claremore Progress

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WEDNESDAY, APRIL 23, 1980 4 SECTIONS, 32 PAGES 15¢

## DeShong youth drowns

BY KATHY WADE
Staff Writer

A playful afternoon for two youngsters turned into tragedy Tuesday after one of the children fell into a water-filled coal pit and drowned, Rogers County Sheriff's Deputy Jack Tanner said.

Tanner said the accident which took the life of 4-year-old Michael DeShong, occurred around noon at the Ray Miller residence, located 10 miles north and one-half mile west of Claremore near the Blue Creek Store.

He said the boy's body was recovered by authorities "about [illegible] feet from the bank," — almost an hour and 45 minutes after the drowning occurred. Tanner said relatives of the youth made unsuccessful attempts to search for the boy.

Authorities were notified about 25 minutes after the drowning occurred, according to Tanner.

Mrs. DeShong and another woman identified as Cheryl Miller were staying with the two children — who apparently strayed from the home down to the coal pit, he said.

Tanner said the hysterical 2-year-old returned to the home and told both women about the accident. The deputy said Ms. Miller later called authorities.

Oklahoma Highway Patrolman Grady Lowrey, Oklahoma Lake Patrolman Mike Cox and several members of the Corps of Engineers assisted in the search for the 4-year-old.

Tanner said the DeShong boy was then taken by Claremore Ambulance Transfer, Inc. to Claremore Health Center where he was examined by the county coroner, Dr. Clarence Johnson.

Funeral services for Michael, son of Mr. and Mrs. Mike DeShong, Rt. 4, are scheduled for 2 p.m. Thursday at the Foyil Baptist Church.

Burial will follow at Woodlawn Cemetery under the direction of Musgrove Merriott Smith Funeral Home.

Michael's parents came to Rogers County three and one-half years ago from Tulsa and made their home in the Spencer Creek area west of Foyil. They are members of the Foyil Baptist Church.

Michael is survived by his paternal grandparents, Mr. and Mrs. Jack DeShong, Tulsa; maternal grandparents, Mr. and Mrs. Grady Warren, Jenks; one brother, Grady and a sister, Natalie, both of the home.

# Body Found In Mine Pit

KEOTA — A 46-year-old raccoon hunter was found dead Saturday where he apparently drowned in a strip mining pit after falling into the cold water the night before, authorities said.

George Hendrix, Stigler, was found in a remote area about seven miles northwest of here where he had been hunting. His hunting dogs were nearby.

Haskell County sheriff's officers and Highway Patrol troopers began searching for Hendrix when his family reported he had not returned home in time for work.

Hendrix's truck and rifle were found near the pit. He apparently fell down a steep bank into the water, authorities said.

# Poteau News & Sun

SUNDAY EDITION

88th YEAR — NUMBER 91 12 PAGES SUNDAY, JUNE 26, 1983 POTEAU, OKLAHOMA 74953 SINGLE COPY 25¢ . . . We're All You

By ROBERT KIDD JR

There is a great possibility that it just wouldn't work. And yet, it seems to be, perhaps, a wonderful answer to a huge problem faced annually by the members of the local Chamber of Commerce.

Locally, there are those who feel that the sponsorship of Poteau's big Frontier Rodeo should be turned over to a semi-permanent Rodeo Commission composed of local rodeo promoters and enthusiasts. Such a commission would be sanctioned by the CofC, would lease the rodeo arena on an annual basis and would develop and promote as much usage of the arena as possible during the entire year.

This idea has been suggested by several members of the Chamber, some who are not members

## Valuation sags with personal property loss

Unofficial valuation figures for LeFlore County indicate that the gross assessed valuation, which does not include homestead exemptions, will be down for the 1983 tax year, according to Roy Boggs, county assessor.

The annual assessor's report, which will be sent to the Oklahoma Tax Commission and the Oklahoma Equalization Board, show that gross assessed valuation has been set at $41,228,815, which is $166,365 less than the 1982 tax year. The decline came in personal property valuations while real estate valuations continued to

(See VALUATION on Page 2)

## Strip pit claims drowning victim

A 34-year-old Marble City man drowned late Friday

# City holding the lin in 'no-growth' budge

The Poteau City Council Monday night adopted a modest growth city general fund budget for 1983-84, calling for an increase of slightly more than five percent over the current fiscal year, which ends June 30.

The $1,430,000 budget will allow for a modest five percent salary increase for city employees to allow them to keep even with inflationary costs over next fiscal year. The salary increase figure is just half the steady 10 percent per year pay hike the city has granted for nearly a decade.

The 1982-83 budget was set at $1,330,000.

City Auditor Dennis Rohrer told the council that the anticipated growth in sales tax revenue will be about eight percent for next fiscal year.

Records show that the estimated sales tax revenue at the current two percent local level is expected to bring in about $1,253,850, compared to the actual estimate of $1,160,834 for last year's budget.

He said other tax revenue will be up for next fiscal year, including franchise taxes. However, he added that some taxes, including permit fees and outside fire runs, will be down.

Estimated sources of other city revenue in the new budget were: franchise taxes, OG&E, $85,850; AOG, $20,000; Allied Telephone Corp., $9,000, and cable television, $300; liquor license, $3,500; building permits, $2,000; animal license, $1,000; beverage taxes, $3,200; gasoline tax, $1, mileage tax, $1,500; vehicle license and other, $40,000; outside fire r $1,500; park and swimming pool, $ police fines, $40,000; parking met $6,000; cemetery lot sales, $6,000; of materials, $6,000; miscellane $10,000; hangar rent, $3,000, and terest earned, $10,000.

Mayor Melvin Taylor said ev department this fiscal year will end year under budget.

The street department with whopping budget of $383,361 has biggest departmental budget in c government and includes $225,000 material and $150,000 for perso services.

(See BUDGET on Page 2)

(See VALUATION on Page 2)

NOT DIST. #2

# Strip pit claims drowning victim

A 34-year-old Marble City man drowned late Friday afternoon at a strip pit between Cameron and Poteau on SH-112, according to the highway patrol in McAlester.

The lake patrol identified the victim as Ronald M. Williams, who apparently stepped off a shelf in a strip pit and drowned while swimming.

The patrol said the incident took place at 6:45 p.m. when the victim, his girlfriend and two of her children went swimming.

Williams and one of the daughters were swimming in a strip pit, estimated to have water 10 or 12 feet deep, when Williams and the girl got into problems, the patrol said. Williams went under once, but resurfaced, it added.

The mother dove into the water and rescued the child, but Williams went under for a second time and did not resurface.

The highway patrol declined to release the names of the woman and children.

Sheriff's office dispatcher Bill Smith said the first report came in at about 7:30 p.m. and the body was recovered about 20 minutes later by the sheriff's office and the Poteau volunteer fire department rescue unit.

This is the third drowning to date this year in LeFlore County. One drowning occurred north of Spiro last week and the second near Bokoshe took place earlier this year.

Claremore Daily Progress
TUESDAY, AUGUST 9, 198 CLAREMORE, OKLAHOMA

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# 3 died in weekend mishaps

Rogers County deputies had a weekend filled with tragedy after investigating two drownings and the death of a Claremore man who fell over the edge of a coal pit north of the city.

Deputy Joe Garber said an investigation is continuing in the Saturday death of Locardio Canales, 35, Claremore, an employee who worked at Port Verdigris 33.

Canales was working on a barge at the port when he apparently fell off a catwalk into the water, says Garber. Canales was unhooking cables on barge lids when he fell over, says the deputy.

The barge was stationary at the time, but Garber said the man may have slipped or was bumped by a lid into the water.

A man working with Canales, identified as Philip King, told Garber he was working on the other side of the barge when he noticed his co-worker missing.

A tug boat operator, Capt. Jim Stice, spotted Canales in the water. Stice and another man, Tex Stafford, Claremore, went in after Canales.

A life preserver was thrown to the 35-year-old man but he was unable to reach it, said Garber, adding that Canales could not swim.

Garber said foul play was first suspected when a physician noticed a puncture wound by Canales' eye. His body was brought to the Claremore Health Center.

The wound was was first thought to be caused by a gunshot, but a Tulsa County medical examiner determined it was a puncture wound, he said.

Garber said the puncture could have been caused by a piece of cable as Canales' body was being pulled ashore. The investigation is pending.

The second drowning occurred Sunday at Hawthorn Cove on Oologah Lake, authorities said.

The body of Michael Marvin McFee was recovered shortly after 7 a.m. today near the old rock quarry, according to Oklahoma Highway Patrol officials.

McFee, 18, Collinsville, drowned Sunday afternoon while trying to swim from west to east across the cove, authorities said.

McFee was about 40 feet from the cove's east bank when he failed to come up, says the OHP. The search continued through Monday night.

Also on Saturday, the body of 29-year-old Gary Dewayne Morgan was discovered in a coal pit about ¾ mile west of Foyil after an apparent 40-foot fall from the edge of the pit.

Deputy Jim Hicks said Morgan's body was found about 8:15 p.m. He speculated Morgan had been in the area two days ago frog hunting.

Hicks said there was a lot of grass around the lip of the pit and Morgan apparently did not see the edge before the fatal fall.

A report came into the sheriff's car concerning a car which had been in the area for two days. Hicks and Sweet both began searching the area when Morgan was found.

Hicks said the death was ruled accidental by the medical examiner.

He said Morgan had been unemployed and was a former security

(Please See 3 Page 2)

(over)

Sequoyah County Times

7-12-84

# Area Man Drowns In Coal Pit

A Sallisaw man drowned in an area coal pit Friday night, but his body was not recovered until about 6:30 p.m. Saturday, Sheriff Sam Lockhart said.

Members of the Sallisaw Rescue Unit and the Oklahoma Lake Patrol discovered the body of Dewayne McGowan, 31, in about 70 feet of water at a coal pit located about three miles west of Sallisaw.

Two men, who had been fishing with McGowan Friday night, reported the incident to authorities at about 2 p.m. Saturday, Lockhart said.

He said the two men went to sleep in the back of a pickup Friday night while McGowan was swimming. One of the men later awakened, but could not see McGowan. Lockhart said the two men, identities unknown, thought McGowan might have been picked up by someone and left the area.

They returned to town the next day but could not find McGowan. When they returned to the coal pit, McGowan's pickup was still parked at the coal pit. They then reported to authorities.

Blakely Smith and A. C. Andrews, of the Oklahoma Lake Patrol,began diving in the coal pit in search of McGowan's body. However, because of the depth, the Sallisaw Rescue Unit had to begin dragging operations. They later found McGowan's body, Lockhart said.

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Page 2, Section A, EDMOND SUNday, Sunday, July 8, 1984

## Body Recovered

SALLISAW, Okla. (UPI) — Members of the Sallisaw Fire Department Saturday recovered the body of a Salisaw man from a strip mining pit in Sequoyah County.

The highway patrol said Clayton DeWayne McGowan, 31, drowned about 11:20 p.m. Friday night.

Lake Patrolman Blakley Smith said McGowan's body was found about 6 p.m. Saturday in 60 feet of water in the pit five miles southwest of Sallisaw.

Mr. **Synar**. Are you aware that many of the sites to be reclaimed in Oklahoma are in rural but populated areas, some are near recreational sites, others are near housing subdivisions, and still others are adjacent to frequently traveled roads?

Mr. **Christensen**. Yes, sir.

Mr. **Synar**. Now let me tell you what I think about OSM's policy and what it is. I think it is a policy of "needless endangerment of human life." I will be very honest with you, I am not going to ask about it again. You know what my position is. And we are not making any headway with you all down there about this very vital issue. But I want you to know in advance, and I want it to be very clear, and I am very serious about this: If a single person is killed in an accident involving one of those sites in Oklahoma which could be restored by the money being held hostage, I intend to make certain that their families have the opportunity to hear from you personally an explanation of OSM's policy, what it is all about and why it was appropriate to illegally withhold the money from Oklahoma.

Now, am I clear on that?

Mr. **Christensen**. I understand.

Mr. **Synar**. OK.

Mr. Bustamante.

Mr. **Bustamante**. Thank you, Mr. Chairman.

Mr. Christensen, you have testified that you asked OMB and Treasury to include cases in the 1986 pilot Federal Tax Offset Program authorized by the Deficit Reduction Act.

Mr. **Christensen**. Yes, sir.

Mr. **Bustamante**. Mr. Chairman, I ask unanimous consent that correspondence we had, or you had with IRS be included in the record. It indicates that IRS will not include OSM cases in the project.

Mr. **Synar**. Without objection.

[The correspondence follows:]

MIKE SYNAR, OKLA., CHAIRMAN

MAJORITY—225-[illegible]
MINORITY—225-[illegible]

Congress of the United States
House of Representatives
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-371-B-C
WASHINGTON, D.C. 20515

January 14, 1985

The Honorable Roscoe L. Egger, Jr.
Commissioner
Internal Revenue Service
1111 Constitution Avenue
Washington, D.C. 20224

Dear Mr. Egger:

Last year, the Subcommittee on Environment, Energy and Natural Resources held hearings regarding the collection by the Interior Department's Office of Surface Mining of civil penalties owed the public treasury. An October, 1984 report issued by the Committee on Government Operations was highly critical of the OSM, stating that the "Department's routine procedure for collection of civil penalties...has not been effective."

In addition to problems of collecting civil penalties which we identified, it has come to the attention of the Subcommittee that the Office of Surface Mining also has difficulties collecting Abandoned Mine Land Reclamation fees payable under Section 402 of the Surface Mining Control and Reclamation Act of 1977. In an effort to improve the Government's success in collecting these fees, Phyllis Thompson, Chief of the Division of Abandoned Mine Land Reclamation, OSM, has been in contact with the Internal Revenue Service to request that use be made of §6402 of the Deficit Reduction Act of 1984 to try to collect debts owed OSM. (See letter dated September 11, 1984.)

However, it is my understanding that a pending pilot test of the offset of debt against tax refunds will not include debts owed under the Abandoned Mine Land Fund (AML). In fact, I understand IRS takes the position that corporations are not covered by the Deficit Reduction Act and, therefore, would not be included in such a program.

At first glance, it would appear that the use of the debt offset process would be a very effective way to collect these debts. In the case of civil penalties, an estimated $200 million is owed the Treasury, and in the case of AML fees, $32 million is delinquent. Accordingly, the Subcommittee would appreciate learning why offset of debt will not be used for the OSM debts.

It has been suggested that IRS takes the position that Congress did not intend that the provisions of the Deficit Reduction Act of 1984 apply to corporations. Since most debts to OSM are owed by corporations, I would also appreciate receiving a detailed discussion of the legal basis for this position. The Deficit Reduction Act of 1984 refers to a "person." Section 7701 of the Internal Revenue Code defines person to "mean and include an individual, a trust, estate, partnership, association, company or corporation," therefore, suggesting that corporations would be covered by the Act.

Thank you for your assistance in this matter.

Sincerely,

Mike

MIKE SYNAR
Chairman

Enclosure

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

FEB 19 1985

FE[illegible] 4 [illegible]

The Honorable Mike Synar
House of Representatives
Washington, DC 20515

Dear Mr. Synar:

This is in further reply to your letter dated January 14, 1985 concerning the operation of the Service's refund offset program.

Section 2653 of the Deficit Reduction Act of 1984 provides for a two year test of offsetting nontax Federal debts against income tax refunds. The conference report (H.R. Rep. No. 98-861) at page 1413 provides that the Secretary may "...test the offset procedures with selected programs before full implementation. Gives the Secretary authority to prescribe terms of agreements with other agencies and the format for transmitting information." Based on the limited test period of the program i.e., the test sunsets on December 31, 1987, and the existing IRS offset mechanism for individuals which was developed to meet the pre-existing statutory requirement to offset individual income tax refunds for certain delinquent child support payments, IRS will use its "selected programs" authority to limit the test to individuals.

You may be interested to know that whereas 77 percent of individual returns filed had refunds last year, only 11 percent of corporation returns filed had refunds.

I trust this information is responsive to your inquiry.

Sincerely,

Thomas J. Tiffany
Acting Director
Legislative Affairs Division

MIKE SYNAR, OKLA., CHAIRMAN
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MAJORITY—[illegible]
MINORITY—[illegible]

NINETY-EIGHTH CONGRESS
Congress of the United States
House of Representatives
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-371-B-C
WASHINGTON, D.C. 20515

March 5, 1985

Honorable Roscoe L. Egger, Jr.
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Mr. Commissioner:

Thank you for the letter I received from the Internal Revenue Service responding to my question as to why the Deficit Reduction Act of 1984 will not be used to offset certain Federal debts against income tax refunds.

The Service's response was, essentially, that the IRS is currently using its "selected programs" authority under the Act to limit, during the test period ending December 31, 1984, the applicability of the program to individuals. The answer that the Service provided, while explaining for the short-term why corporations are not included, fails to answer the central question underlying my initial inquiry: What is the position of the Internal Revenue Service with respect to the applicability of the offset provisions of the Deficit Reduction Act of 1984 to corporations?

As I stated in my initial letter:

> It has been suggested that IRS takes the position that Congress did not intend that the provisions of the Deficit Reduction Act of 1984 apply to corporations. Since most debts to OSM are owed by corporations, I would also appreciate receiving a detailed discussion of the legal basis for this position. The Deficit Reduction Act of 1984 refers to a "person." Section 7701 of the Internal Revenue Code defines person to "mean and include an individual, a trust, estate, partnership, association, company or corporation," therefore, suggesting that corporations would be covered by the Act.

For the reasons outlined in my initial letter, I would appreciate your assistance in obtaining a clarification of the issue of whether or not the IRS considers the Deficit Reduction Act of 1984 applicable to corporations, as well as individuals.

In addition, as the Service's response suggested, I am interested to know that 77 percent of individual returns filed had refunds last year compared to 41 percent of corporation returns filed. I would appreciate your providing more detailed information regarding those statistics; specifically, the total dollar amount of the refunds to individuals and the total dollar amount to corporations.

Again, I want to thank you for your assistance in this matter, and I look forward to your expeditious response to the question posed in my initial letter.

Sincerely,

Mike Synar

MIKE SYNAR
Chairman

Internal Revenue Service
Department of the Treasury

Washington DC 20224

MAY 02 1985

RECEIVED

MAY 07 1985

TIME 1:30 pm

SUBCOMMITTEE ON ENVIRONMENT, ENERGY & NATURAL RESOURCES

The Honorable Mike Synar
Chairman, Environment, Energy, and Natural
  Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in further response to your March 5 letter concerning the refund offset test provided for by the Deficit Reduction Act of 1984 (DRA).

The refund offset provision of DRA covers both corporate and individual debts. IRS does not claim otherwise. However, IRS, using the authority given it by Congress, has decided to limit the offset test provided by DRA to individuals. The decision was based primarily on the fact that IRS has in place a computerized system to offset debts for individuals. It would be both costly and time-consuming to construct such a system for corporations. In addition, at this time IRS computer resources are subject to severe restraints due to a changeover in computer systems.

The dollar amounts of tax refunds paid in FY1984 to individuals was $64.6 billion, and to corporations $17.9 billion. Due to an error on our part, our February 4 letter to you indicated a corporate refund rate of 11 percent; the correct figure is 23 percent.

Sincerely,

Thomas J. Tiffany
Acting Director
Legislative Affairs Division

Mr. Bustamante. Do you know if IRS has changed its views since this correspondence took place, Mr. Christensen?

Mr. Christensen. No, sir, I don't believe they have. I believe it requires a statutory change. We have been discussing it with them, and we will continue to do so. But there is only so much we can do, sir.

Mr. Bustamante. You testified in July 1984 on this same issue, regulations implementing provisions of the Debt Collection Act.

For the period from July 1984 to June 1985, what was the actual amount of money collected for the 6-percent penalty charge allowed under the Debt Collection Act?

Mr. Christensen. None.

Mr. Bustamante. How much was collected for administrative costs during this same period?

Mr. Christensen. Can I provide that to you for the record?

Mr. Bustamante. Pardon.

Mr. Christensen. Can I provide that to you for the record?

[Information submitted by the Office of Surface Mining follows:]

OSM implemented the provision of the Debt Collection Act allowing for cost recovery beginning January 1985. From January 1985 through June 30, 1985, OSM's collection agent collected $22,416 in administrative fees from debtors involving 30 claims.

Mr. Bustamante. This subcommittee has been particularly concerned about OSM wasting money on duplicate computers. Today's testimony holds the promise of yet more duplication. Page 3 of your testimony describes a system for "identifying and linking principals and major stockholders appearing in multiple coal operations." It sounds duplicative to me.

Current plans for a system being developed in response to the court order, page 4, describes a proposal for a system to track AML enforcement and litigation actions associated with reclamation fee violations. It sounds duplicative of the system Mr. Kim described in our March hearings that was being developed on an IBM PC and would include AML fee collection data. An important challenge of the job is to figure out a way to ensure that these efforts are coordinated and not duplicated.

Can I get your commitment that you will seek to ensure that such systems are not a duplication and wasteful?

Mr. Christensen. Yes, sir. I appreciate your comment, and I realize that there has been substantial amounts of money spent on this effort. I might just indicate to Mr. Bustamante that we are actively recruiting a computer expert or an ADP person to head up all the efforts on ADP in the bureau, and hopefully this person will help us make sure that we are not duplicating effort as far as computers we buy, software we use, and data that we use.

Mr. Bustamante. Let me tell you what IRS says. IRS says it will be costly and time consuming to construct such a system for corporations. In addition, at this time IRS computer resources are subject to severe restraints due to a changeover in computer systems. This is what IRS is saying about that.

Mr. Christensen. Yes, sir. A lot of the work that we do will be done by contract to companies that already have that information.

Mr. Bustamante. Thank you, Mr. Chairman.

Mr. Synar. Thank you.

Mr. Clinger, for 5 minutes.

Mr. Clinger. Thank you very much, Mr. Chairman.

I just want to change the focus a bit, Mr. Christensen. We have been discussing how to go about collecting as much of the AML funds as possible. Obviously the concern here is that we have a problem that is enormous and limited resources with which to address the problem, so that there is a great need for the greatest amount of cost effectiveness.

But it is apparent that the fund in general over its lifespan is not going to ultimately be able to clean up all of the sites that we are dealing with. So it seems to me that we need to be considering alternative methods of approaching the problem. Two major alternatives come to mind, and I just wanted to get your comments on each of them if I could.

Mr. Christensen. Certainly.

Mr. Clinger. First, is the concept of remining. This goes directly to the ground water problems, which I believe Mr. Murphy cited in his testimony.

Mr. Chairman, at this point I would ask unanimous consent that the summary of the remining concept prepared by my staff be inserted in the record.

Mr. Synar. Without objection.

[The summary follows:]

## COAL REMINING

### PROBLEM:

The EPA's present effluent limit regulations for coal mining operations provide a great disincentive to the remining of many areas where mining was previously performed without reclamation, i.e., abandoned mine lands (AML's). These regulations assign interim and permanent liability (to meet water effluent standards) to the current mining operation for all pre-existing discharges encountered when entering a previously mined area. Treatment is not only a great financial expense to the operator, but in many instances a technological impossibility as a result of pre-existing mine discharges of effluents far in excess of the current standards.

### SOLUTION:

A modification needs to be made to Section 301 of the Federal Water Pollution Control Act to provide for an exception from the effluent limits for remining in favor of a policy of non-degradation and potential for improvement of the water quality present at the time of the initiation of remining. The area a coal operator chooses to remine would be subject to the full range of environmental performance standards contained in the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for all aspects except water quality. Operators would be required to provide an abatement program in the reclamation plan which would result in a reduction of the mass loadings of pollutants from the pre-remining pollution load and would provide for overall enhancement of other health, safety, and environmental parameters as regulated under SMCRA.

### BACKGROUND:

At the time of passage of the Surface Mining Control and Reclamation Act (SMCRA) an estimated 1.5 million acres of land had been disturbed by coal mining, and over 11,5000 miles of streams polluted by sediment or acidity from surface or underground mines. The Abandoned Mine Land fund (AML), authorized under SMCRA, established a tax levied on coal operators to fund reclamation of these areas. Fee collection began in 1978 and will extend through 1992 yielding approximately $3 billion. The problem however is that reclamation of 100% of the coal related AML's has been estimated to require between 12 and 30 billion constant 1983 dollars. From these projections it is clear to see that the AML fund will only generate the monies necessary to rehabilitate 10 to 20% of the affected lands. Given this condition and the present effluent limits applicable to remining operations, the remaining majority will either continue in perpetuity to degrade the environment or necessitate funding for cleanup from the Federal Government's general revenues or additional taxes on the coal industry.

This situation need not be so drastic. Estimates indicate that approximately 40 - 45% of these lands contain additional recoverable reserves that today can be mined with economic benefits if a limited exclusion from the applicability of effluent limitations is enacted.

An amendment incorporating the provisions we have suggested would ensure that significant reclamation would be performed at no expense to the taxpayers, and would positively enhance the quality of existing effluents coming from the sites. It would subject such operations to all other environmental and safety standards of SMCRA. Equally as important, yet often overlooked, is the fact that this provision will provide an increased reserve base which will ensure future employment and a continuing tax base in traditional mining areas. This is particularly important given the increasing scarcity of virgin lands in many established mining communities. It is doubtful that many previously mined areas will be mined and reclaimed unless a constructive remining amendment is enacted.

As a consequence, discharges from those sites will continue to adversely impact the environment. Enactment of the proposed solution will encourage the remining of those sites and result in an environmentally improved area.

Mr. CLINGER. Briefly, many abandoned mine lands are currently discharging pollutants and will continue to do so into eternity unless the coal industry can be enticed into remining and, as new operators, be responsible for reclamation under SMCRA. Thus, old sites are reclaimed without a drain on the AML fund and more of our most abundant energy resource can be mined.

The problem is that current EPA effluent limit regulations are too rigid to make remining technically or economically feasible, especially and particularly for the small coal operator. He just is not willing to take on the tremendous liability that exists under existing regulations.

Last Congress, our colleague, Nick Joe Rahall of West Virginia, and I, introduced an amendment to the clean water bill which would make remining a feasible option for the operator. The amendment was adopted and the bill was passed in the House. Unfortunately, it did not pass the Congress. We intend to make a similar effort on that amendment this year.

Current estimates are that 40 to 45 percent of unreclaimed mines are reminable, and I consider this a viable option for reclamation at no cost to the Federal Government. In fact, it is estimated that in Pennsylvania alone about $75 million in reclamation per year would be done; which is not being done now, but which would be done by the private sector if remining was made feasible economically and productively.

Does the Office have any thoughts on this? Or what do you think about the remining concept?

Mr. CHRISTENSEN. Congressman, the concept I think is an excellent idea. We are concerned, as everyone is, that the amount of money ultimately in the reclamation fund will only cover what is currently known as priority I's and II's, and that will be stretching it. If there is anything we can do to stretch out that fund or to use other resources to reclaim abandoned mine lands, I think that is a superb idea.

We certainly want to study that with you and, hopefully, we can support that as an administration.

Mr. **Clinger**. I am delighted at your response. I think that we will look forward to working with you on this, because I really do think that we do need to have alternatives; this is one that has great promise.

Mr. **Christensen**. Absolutely.

Mr. **Clinger**. The second alternative is the suggestion for a lower cost method of doing reclamation work than what we are presently engaged in. It costs a great deal, as we are all aware, to haul the very heavy equipment, earth-moving equipment, et cetera, to a mine site. Operators move their equipment and often right next to the mine lands is an unreclaimed site. In other words, where they are presently mining they will be operating right next to an unreclaimed site.

It seems that there could be significant cost savings if the equipment already near the site could be contracted to perform the reclamation rather than bringing in new equipment as is presently involved.

Has there been any discussion of this approach or other approaches for trying to improve the cost effectiveness of our efforts?

Mr. **Christensen**. Yes, Congressman Clinger. In fact, one of the first papers I signed when I came in was a contract with the National Academy of Science to look at alternative methods of doing reclamation work. They are starting that. I don't remember if that is a 6-month or a year study, but that has commenced and we are looking forward to any recommendations they might make to us.

Mr. **Clinger**. We would certainly be interested in having the results of that examination when you do have them.

Mr. **Christensen**. Certainly. That will be provided.

[The information follows:]

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

RECEIVED

SEP 12 1985
SEP [illegible] 1985
TIME 12:18 pm
SUBCOMMITTEE ON ENVIRONMENT,
ENERGY & NATURAL RESOURCES

Honorable Mike Synar
Chairman, Subcommittee
on Environment, Energy,
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Synar:

Enclosed is the transcript of the hearing before the Subcommitte on Environment, Energy, and Natural Resources on July 11, 1985, regarding the Interior Department's Collection of Fees for the Abandoned Mine Land (AML) Funds. The transcript has been reviewed and the remarks of the Departmental witnesses have been corrected.

The following list of information requested is enclosed for insertion in the record.

| | | |
|---|---|---|
| Item #1 | Page 60 | Lines 1379-1382 |
| Item #2 | Page 61 | Lines 1400-1406 |
| Item #3 | Page 70-72 | Lines 1619-1641 |
| Item #4 | Page 74-75 | Lines 1703-1707 |
| Item #5 | Page 79-80 | Lines 1792-1802 |
| Item #6 | Page 91-92 | Lines 2097-2099 |
| Item #7 | Page 93-94 | Lines 2129-2137 |
| Item #8 | Page 97 | Lines 2209-2211 |
| Item #9 | Page 97-98 | Lines 2215-2221 |
| Item #10 | Page 99-100 | Lines 2226-2264 |
| Item #11 | Page 106-107 | Lines 2400-2403 |

Finally, I have taken note of a commitment made on page 67 of the transcript regarding a National Academy of Science study on alternative methods of reclamation work. Although it will not be available for inclusion in the record, I will provide it to the Subcommittee when it is completed. The completion date of the 18-month study is during the fall of 1986.

If you have any questions regarding the enclosed material please contact Nancy Smith on 343-2165.

Sincerely,

Jed D. Christensen

Acting Director

Enclosures

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. SYNAR. Thank you, Mr. Clinger.

Mr. Christensen, it is not clear from your testimony how significant OSM believes the underreporting may be. For example, OSM cites a comparison of aggregate data from OSM and EIA for calendar year 1983, and describes the discrepancy of 8.7 million tons as "only 1 percent." Now this suggests you may not consider it significant, so let me ask you a question directly.

Ms. Thompson, if you would come up.

Ms. Thompson, in your view, is there significant underreporting or nonreporting in the United States?

Ms. THOMPSON. I suppose I don't know what the word "significant" would be defined as. I would have to say based on the statistics we have there isn't significant underreporting.

Mr. SYNAR. All right, let's assume for a minute that the comparison described in your testimony is reasonably accurate. Let's go at it that way.

The 8.7 million tons at 35 cents a ton comes to $3,045,000 that would have gone uncollected that year. The figures in the 1983 annual report regarding AML fund payments for State projects show $3 million alone could have paid for almost the entire program in Virginia, which was $3.8 million, or in Colorado, which was $3.1 million.

Do you think people who live near those sites that could have been cleaned up with this money would think $3 million is insignificant?

Ms. THOMPSON. No. They would think it is very significant.

Mr. SYNAR. Even in spite of the many problems that the inspector general identified with audits, according to your testimony, in 1985 OSM determined that $11.7 million in additional fees were owed. That would have paid for more than half of the program in West Virginia or the entire program in the States of—listen to this—Indiana, Iowa, Kansas, Maryland and my home State of Oklahoma combined for 1983. Now, frankly, I don't think the people who benefited from projects in those States would have considered those amounts insignificant.

Do I understand correctly that operators who are exempt under the 2-acre provision of the Surface Mining Act do not pay reclamation fees?

Ms. THOMPSON. That is correct.

Mr. SYNAR. At the subcommittee's March hearings we heard testimony that about 3,000 mines nationwide claimed a 2-acre exemption; 80 percent are estimated to be improperly reclaimed. If that is the case, the AML fund could be losing yet another source of reclamation fees.

Does anyone have any idea about how much revenue is being lost through this 2-acre exemption?

Mr. CHRISTENSEN. Mr. Chairman, I am not sure that we do have an idea of that. You know that we are actively involved in doing an inventory and inspection of all those sites, particularly in Kentucky and Virginia, and enforcement actions will be taken as those are uncovered.

Mr. SYNAR. Let's see if I understand the basic concept of the reclamation fee. It is a rather straightforward assessment based upon the tons of coal produced. In fact, it is treated as an excise tax. Is that not correct?

Mr. CHRISTENSEN. I believe that is true.

Mr. SYNAR. Now, since the tax is assessed based upon coal produced, verification of the amount of coal produced is a fundamental part of determining if the right fees are paid to the U.S. Treasury for the trust fund. Is that correct?

Mr. CHRISTENSEN. That is true.

Mr. SYNAR. All right. And that is done primarily through audits and other fee compliance activities conducted by 31 fee compliance officers—32 as of this week—all located throughout the United States. Correct?

Mr. CHRISTENSEN. That is true.

Mr. SYNAR. All right. Ms. Thompson, when did you assume responsibility as chief of the Abandoned Lands Division?

Ms. THOMPSON. In September 1981.

Mr. SYNAR. All right. How many fee compliance officers were onboard in fiscal year 1982?

Ms. THOMPSON. I would have to check on that figure.

Mr. CHRISTENSEN. Mr. Chairman, I believe it is approximately the same. Maybe a few less.

Mr. SYNAR. We want the actual body count. I don't want positions allocated. How many?

Mr. CHRISTENSEN. We will provide that to you.

[The information follows:]

Provide "actual body count" of Fee Compliance Officers for FY 1982, FY 1983, and FY 1984. Also provide number of positions for same time frame.

FEE COMPLIANCE OFFICERS

| FY | Number of Positions | Positions Filled End of Year |
|---|---|---|
| 82 | 27 | 27 |
| 83 | 29 | 24 |
| 84 | 29 | 29 |
| 85 | 33 | *32 |

*Recruitment in process for unfilled position, vacancy anticipated to be filled by end of FY85.

Mr. SYNAR. All right. How about in 1983?

Mr. CHRISTENSEN. I am not sure of the exact number.

Mr. SYNAR. OK. 1984?

Ms. THOMPSON. There are 33 positions.

Mr. SYNAR. How many people are there? I want bodies.

Ms. THOMPSON. As of right now I believe they are all filled positions.

Mr. SYNAR. 1984? Not now, 1984?

Ms. THOMPSON. Oh, I am sorry. I will have to check on that number.

Mr. SYNAR. Does 29 sound right?

Ms. THOMPSON. I would have to check on that.

Mr. SYNAR. OK. Now, the data submitted for the record by Mr. Lyon, who previously testified, shows that in 1982 and 1983 OSM hired high school graduates who had no formal auditing training, no related Government experience, to be fee compliance officers. In both 1981 and 1985, the Department's inspector general raised serious questions about the quality of their audits.

How could it happen that people with questionable qualifications for the job were hired for a position so key to the successful administration of this program?

Mr. CHRISTENSEN. Mr. Chairman, historically, the minimum qualifications for those positions were much lower than they are now. We have restructured those positions, reclassified them to a much higher grade, and required much more accounting experience before they can get into these positions.

So, I think at the time—I think you are absolutely correct to point that out, that those people were probably not qualified. The people we are hiring now are required to have at least 24 hours of accounting and experience before they can get into these positions.

Mr. SYNAR. When did you establish those new classifications?

Mr. CHRISTENSEN. Those position classifications were just done this spring.

Mr. SYNAR. When?

Mr. CHRISTENSEN. This spring.

Mr. SYNAR. Is it true that about 8 months ago the grants specialist made an unauthorized change in jobs and assumed the duties of the fee compliance officer's job?

Mr. CHRISTENSEN. I believe there has been a serious problem of the fee compliance officers not being able to spend 100 percent of their time doing audits.

Mr. SYNAR. That is not the question.

The question was, did 8 months ago a grants specialist in your office make an unauthorized change in jobs and assume the duties of the fee compliance officer?

Mr. CHRISTENSEN. May I have Mr. Close answer that?

Mr. CLOSE. I believe you are referring to a case where a person in one of our field offices——

Mr. SYNAR. Albuquerque, NM.

Mr. CLOSE [continuing]. Was officially detailed to the job of a fee compliance specialist. That person has an accounting background and sufficient numbers of accounting courses to qualify for the job. He does lack the experience which would ordinarily be required in moving to such a position. Details are an accepted way of getting that experience under the Federal Personnel System.

Mr. SYNAR. Do I understand correctly that the personnel office issued a temporary change in duty assignment after this job switch occurred?

Mr. CLOSE. I am not aware of the timing on that, sir.

**Mr. Synar.** Mr. Christensen, you are the boss. How will you discipline the people involved, including supervisors and personnel officials who blessed this change after the fact, if that is the case?

**Mr. Christensen.** This was done 8 months ago?

**Mr. Synar.** Yes.

**Mr. Christensen.** Well, let me look at the case and determine what is appropriate.

**Mr. Synar.** OK. We will need something for the record for that. So what we would like from you is to find out—we will give you some time. We would like you to find out what the situation is there and then also to report to the committee what you intend to do to discipline the people involved, if those changes were made after the fact.

[The information follows:]

On April 14, 1985, the Albuquerque Field Office Director detailed a Regulatory Program Specialist to AML fee compliance functions. The person detailed had the formal training required to perform audit functions. He did not, however, have the on-the-job experience required to be classified as an auditor. The use of a detail is an accepted means of providing temporary assistance where additional help is needed, and is an accepted method of providing training to a person who would not otherwise qualify for a position.

The detailee was carefully supervised by a fully qualified auditor throughout the process. He was accompanied by the auditor on all fee compliance audits made. The auditor provided guidance in the preparation of audit findings and reviewed the audit reports. The detail was terminated on August 11, 1985.

**Mr. Synar.** Mr. Christensen, OSM has a disturbing record of allowing unqualified people to conduct audits. I think you just admitted that. What assurances can you give us that all the new hires of fee compliance officers will, in fact, be qualified as auditors?

**Mr. Christensen.** Mr. Chairman, the actual classification have been changed as well as grade level. The minimum qualifications for these positions have been increased.

**Mr. Synar.** How many of the new officers meet those new qualifications?

**Mr. Christensen.** It is my understanding that out of the 33 people that we have onboard, over 20 of them actually at this time meet those minimum qualifications. The other 10 or 12, whatever the figure would be, have been instructed that they will receive additional training and that we are going to work with them as much as we can to encourage them to come up to this minimum qualification level.

**Mr. Synar.** When will all 33 be adequately trained and qualified?

**Mr. Christensen.** We can't actually force the 10 who don't meet those minimum qualifications, since they currently hold the job, to take that training to meet the 24 hours of accounting. However, we can encourage them and basically instruct them to take training that we require.

**Mr. Synar.** You can't transfer them if they don't?

**Mr. Christensen.** We can change their duties that is true.

**Mr. Synar.** Absolutely. Well, let me encourage you to consider that if any of the 10 decide they don't want further training.

**Mr. Christensen.** Certainly.

Mr. SYNAR. Now, the life of the AML Program is more than half over. It looks to me that it may require some people for several years to be qualified.

Mr. Christensen, can I get your commitment that in the next 6 months you will take whatever action is necessary to place qualified persons in these positions and arrange different jobs for those who are not qualified in accordance with the civil service protections?

Mr. CHRISTENSEN. I will look to make every effort I can to do that. And I might suggest one other thing we are willing to do, and are in the process of doing——

Mr. SYNAR. Let us start this hearing off right. We are not going to accept that as an answer. We want either a yes or a no. OK?

Do I have your commitment that you will do this?

Mr. CHRISTENSEN. Not absolutely in that timeframe; no, sir.

Mr. SYNAR. OK. The inspector general identified audits which are not conducted in accordance with OSM's policies and procedures. Similarly, upon reviewing in 1984 and 1985 audit reports, the subcommittee staff noted that auditors are not auditing quarterly as required by OSM's own procedures. The inspector general specifically recommended that OSM "establish controls to assure that the fee compliance audits are conducted in accordance with the requirements of the policies and procedures."

Now, in response to that recommendation, OSM said:

> OSM will draft a memorandum to the field office directors reemphasizing the importance of following existing policies and procedures for audit.

This subcommittee's hearings' records are full of ignored OSM memorandums and directives. This morning you heard Mr. Esposito testify about yet another, very important, ignored memorandum.

Mr. Christensen, other than sending another memo which says, "we really mean it," which I don't want to do, what will you do to make certain these audits are conducted according to procedures?

Mr. CHRISTENSEN. Mr. Chairman, I couldn't agree with you more on the concern that I have, and I share with you, on this exact item. If people in the field are not following our instructions, then disciplinary action should be taken. This is something that has just come to my attention yesterday in the briefing for this hearing, and I am going to look into it, determine who it is that is responsible for that, and have serious discussions with them.

I agree more memos don't do the job. The memos are there, the instructions are there, and they should be following them.

Mr. SYNAR. How long have you been in the job?

Mr. CHRISTENSEN. Two months.

Mr. SYNAR. I would ask unanimous consent that a memo dated January 31, 1985, be included in the record at this time. It addresses the further problem of unqualified people supervising the work of qualified people.

[The memorandum follows:]

JAN 31 1985

Memorandum

To: Ann Chapman
Personnel Officer

From: Phyllis [illegible] 151
Chief, Division of Abandoned Mine Land Reclamation

Subject: Reclassification of Fee Compliance Officer Positions

I want to thank your staff, and, in particular, [illegible] Newman, for the excellent recently-completed work associated with the above personnel action. Ms. Newman provided me professional assistance, well-conceived recommendations and a thorough final document which will go a long way in bringing further structure and consistency to the fee compliance program.

One outstanding and sensitive problem remains, however, which requires immediate attention. Of the 31 fee compliance specialist (FCO) positions in the field, definitely two (and possibly three) are encumbered by individuals who already were GS-12s at the time of the reclassification, do not qualify for the 511 series and do not perform the duties contained in the new standard GS-12 position description. Similar problems arise with an additional individual (possibly two) who apparently does not occupy one of the 31 authorized positions but who does perform quasi-supervisory duties in relationship to the FCOs (in the second instance, auditing is not a full-time duty but is performed along with other AML responsibilities). In the past, in accordance with the Field Directors' instructions, these individuals have served as coordinators and quasi-supervisors, although the first responsibility has not been sanctioned by this program office and the second appears to have been inappropriate as official local supervisors exist. I should note the aforementioned situation exists in only three of the 10 Field Offices to which FCOs are assigned—elsewhere, as always was and is intended, there are no intermediaries between the FCO staff and the designated supervisors.

The obvious question now facing both this program office and the Division of Personnel is what can be done to eliminate this aberration. No higher field grades, other than supervisory, are currently justified, as all program direction emanates from Headquarters, where program analysts and, probably in time, senior technical (511) personnel may be found. Centralized systems and procedures are being developed in Headquarters which will enable each FCO to easily manage his/her own workload under the guidance of the assigned supervisor. [redacted].

On the other hand, at least two of the individuals do occupy FOD positions, are being paid at the GS-12 level and can be brought up to the full performance level of an FOD through appropriate job assignments and requisite academic training. Involvement of the new duties certainly would not disadvantage them and would provide the program with additional [illegible] auditors.

One final option appears to exist. If the Field Office Directors affected have vacant positions outside the fee program—for the fee program cannot afford to lose positions—the individuals could be shifted to those positions and to totally new duties not associated with the fee compliance program. More likely, in light of additional [illegible] of the fee program, but worth exploring, these slots could be added to the fee program and new, separate GS-11 position descriptions prepared for the individuals, assuming Headquarters can identify and/or concur in legitimate duties that are necessitated by [illegible] associated with the Lexington, Charleston and Harrisburg Field Offices, (as none appear justified based on the program itself, or given the fact that other Field Offices are able to operate absent similar program support positions). This option would allow recruitment to occur for the then-vacant [illegible] jobs.

I would like to see the impacted individuals remain associated with the fee compliance program, but they obviously must do so within the legitimate structure of that program. [redacted] For sake of the governing personnel procedures, as well as to ensure equity and maintenance of staff morale, we need to address the situation promptly.

Please have the appropriate person on your staff contact me so we might fully examine our options, review position descriptions under which the referenced individuals are working, prepare the necessary documents and transmit them to the Field Offices involved.

cc: OSM Record;OSM Reading;AML_R Reading;AML_R Subject;RIM;
OSM/AML_R/PThompson:lat:1/29/85
Document

#36320

Mr. SYNAR. Can I get your commitment, Mr. Christensen, that during the next 6 months you will resolve this problem?

Mr. CHRISTENSEN. I believe that is entirely appropriate.

Mr. SYNAR. OK.

[The information follows:]

To assure that audit personnel are supervised by fully qualified managers with audit and accounting background, Senior Auditor (Field Supervisory) positions are being established in the GS-511 series at the GS 12/13 Level. The series requires a job applicant to meet specific educational and experience requirements in the accounting or auditing areas. Only OSM personnel who meet the educational requirements and have audit experience will be eligible for selection for these positions.

Mr. SYNAR. Mr. Kolter, welcome.

Mr. KOLTER. Thank you, Mr. Chairman.

Mr. SYNAR. How are you feeling?

Mr. KOLTER. Not bad.

Mr. SYNAR. All right.

Mr. KOLTER. Not bad for being tardy.

Mr. SYNAR. OK.

Mr. KOLTER. Mr. Chairman, has Mr. Cannon been sworn in?

Mr. SYNAR. Yes; he has.

Mr. KOLTER. Could we ask Mr. Cannon if he will come to a microphone?

Mr. SYNAR. Yes.

Mr. Cannon, if you will come to the table.

Mr. KOLTER. He has been sworn in?

Mr. SYNAR. Yes; he has.

Mr. KOLTER. Mr. Cannon, let's talk about the abandoned mine land fees being basically an excise tax. The levy and collection of taxes is a uniquely governmental function, is it not?

Mr. CANNON. Yes, sir.

Mr. KOLTER. As a partial solution to problems with the fee compliance program, I understand that OSM is now considering contracting out for audits. Mr. Cannon, your office concludes this is acceptable based on OMB Circular A-76. While acknowledging that the A-76 circular specifies tax collection as a governmental function, the Division of Surface Mining concludes, without explanation of the basis, that the audit portion of the tax function can be contracted out.

Now, we have some problems with that conclusion and other serious questions related to contracting out, including access to records and the Privacy Act requirements. Let us assume for a moment that what OSM proposes to do is within its authority. How do you plan to protect against potential conflicts of interest that contract auditors might have with other clients who are in the coal production business or who have an ownership interest in such business?

[No response.]

Mr. KOLTER. Well, Mr. Christensen, would you like to answer that?

Mr. CHRISTENSEN. I certainly understand your concern, Congressman. And I think it is an accepted practice to use contract auditors. We would be using contract CPA people who would go out and do contract work for us, audits. However, they would be following very strict specifications that we would identify for them, and it is not like they would just be let loose on these companies. They will be told exactly the procedures to follow and what it is we are looking for. This helps extend our own auditors.

Mr. **Synar**. That doesn't eliminate the conflict-of-interest problem, does it?

Mr. **Christensen**. If there is a conflict of interest, then that is a firm that would have to excuse themselves from doing that work.

Mr. **Kolter**. Well, how do you propose to correct that, to take care that there will be no conflict of interest?

Mr. **Christensen**. I think that in our specifications we will require that they expose those kinds of conflicts. And if they do have, we will be unable to use that firm for those particular audits.

Mr. **Synar**. Would the gentleman yield?

Isn't the only way to determine whether they have a conflict of interest is to determine which clients they have; and they have a hesitancy to tell you who their clients are?

Mr. Cannon?

Mr. **Christensen**. I would imagine so.

Mr. **Cannon**. I believe that you can deal with that problem by getting a certification from the contracting unit, company or person.

Mr. **Kolter**. Well, wouldn't you have a list of all the clients? A list of all the clients of the contracting agent?

Mr. **Christensen**. Yes.

Mr. **Cannon**. I suppose you could do that as well, and that would be an awfully good basis. But if someone was not going to tell you a client, they could certainly eliminate a client from a list as well as by ignoring a conflict when they certified that they didn't have one.

Mr. **Kolter**. That is true. But getting the list would be a heck of a good start, would it not?

Mr. **Cannon**. Yes, if they would give it to us. And on the other hand, I think that if a company is going to lie, if they are going to be certifying that they don't have a conflict when they do, I don't think you can get around that by getting a list. I don't think that a list will entirely do that, but it is probably a good idea that we could look at.

Mr. **Kolter**. So really you have no way of guaranteeing there will be no conflict, is that right, Mr. Christensen?

Mr. **Christensen**. Well, it is hard to guarantee that kind of thing. I assume that at some point it is possible that some of those things could come to light, but I would believe that a CPA firm who is certified to do this kind of work would be hard-pressed to lie or be deceitful to us as a Federal agency. I am not saying it can't happen.

Mr. **Synar**. Well, let me, if I could just jump in here. Knowing that the potential problem exists, knowing we have gotten some recent examples out of Wall Street and some other places where just because they have a good reputation doesn't necessarily guarantee, why are you considering contracting out?

Mr. **Christensen**. I believe that it is a good way to audit in places where we don't necessarily have the personnel and to extend the people that we have. We are not talking about extensive contract audits here. The IG himself uses contract audits for MMS, so it is not an unknown phenomena.

Mr. **Kolter**. Well, before you leave here can you advise the committee whether or not you will insist on requiring the contracting firms to disclose all of its clients?

Mr. **Christensen**. I don't know how I can require that. I would certainly ask them to; and if they didn't feel comfortable doing that, and they may not——

Mr. **Kolter**. Make it a condition of keeping the contract. You know what I mean?

Mr. **Christensen**. It is my understanding that is in the package of specifications.

Mr. **Kolter**. Oh, it is? Well, that is great.

One last question. I think there are some important legal and ethical questions here which should make people cautious about getting on the contracting out bandwagon. Why not take the $233,000 you have proposed to be spent in fiscal year 1986 on contracting out and just hire some top rate accountant/auditors?

Mr. **Christensen**. Now, that is not a bad suggestion, sir. But as you know, there is an FTE limit on how many people we can actually hire, and this is one way to help us get around that.

Mr. **Kolter**. Can you explain that limit to me?

Mr. **Christensen**. We are told exactly how many people we may hire, have onboard in our bureau, and we have to stay pretty strictly to that. So to hire more people without the ceiling, so to speak, is very difficult.

Mr. **Kolter**. Well, could you advise the committee what the limit is?

Mr. **Christensen**. Certainly.

Mr. **Kolter**. Are you up to it? Have you reached that limit yet?

Mr. **Christensen**. That limit is always cyclical, up and down. Right now, at this very moment, we have not reached our full FTE limit for this fiscal year.

Mr. **Kolter**. What is the basis for making it go up or down?

Mr. **Christensen**. Attrition, people leaving, people going to other jobs, hiring new people—it is a constant fluctuating figure. What we try to do is meet that figure as close as we can at the end of the year.

Mr. **Kolter**. Mr. Chairman, I have no further questions.

Mr. **Synar**. Thank you, Mr. Kolter.

Mr. **Kolter**. Thank you.

Mr. **Christensen**. Thank you, sir.

Mr. **Synar**. I will recognize myself.

Mr. Christensen, the inspector general states that, even with the many problems plaguing audits, fee compliance officers have successfully identified some unreported fees. However, a recent departmental analysis shows that the fee compliance officers spent only 28 percent of their time conducting audits, while 40 percent of their time was spent on nonfee compliance related activity.

Can you tell me, of the total number of mines that OSM knows should be audited, how many of them have been audited?

[Pause.]

Mr. **Synar**. Ms. Thompson?

Mr. **Christensen**. We can get that for you in a moment.

Mr. **Synar**. Let me give it to you.

Mr. **Christensen**. OK.

Mr. **Synar**. 22,413 mines are available for audit. You have audited 8,003, or 35 percent. Does that number sound correct?

Ms. **Thompson**. Yes.

Mr. **Christensen**. Yes, sir.

Mr. **Synar**. Thank you very much.

So that means that the majority of mines have not been audited; is that correct?

Mr. **Christensen**. That is true.

Mr. **Synar**. As you know, last December the subcommittee staff asked for the basic information regarding unaudited mines, but it was only this week that OSM could produce the data from the Denver computer. Now knowing which mines remain to be audited would seem to be very important to OSM to help target mines for future audits.

Can you tell me why OSM did not program the computer to provide such information until so recently?

Mr. **Christensen**. I have no idea.

Mr. **Synar**. Is there somebody here who can tell me? Ms. Thompson?

Ms. **Thompson**. I also can't answer that question.

Mr. **Synar**. Oh, I meant to ask my starting question. How many people are here from OSM today? Everybody stand up; I want to see who is running the shop. Everybody from OSM.

I taught them a lesson. They are all downtown today.

Mr. **Christensen**. They are all at work.

Mr. **Synar**. That is all right.

Mr. **Ewing**. Mr. Chairman, on the last question——

Mr. **Synar**. Are you sworn in?

Mr. **Ewing**. Yes, sir.

Mr. **Synar**. OK.

Mr. **Ewing**. When Mr. Esposito asked me for the information about a month ago, I directed our computer center in Denver to provide that information that you have there. That was provided to Mr. Esposito. So it has taken us approximately——

Mr. **Synar**. That is not the question. The question is why did it take until just a couple of weeks ago to get that information since that information is critical to determine where you go to audit the future mines?

I mean, we have had that request outstanding since when? Since December. Why did it take until just——

Mr. **Ewing**. It came to my attention last month, sir.

Mr. **Christensen**. I might identify Mr. Ewing.

Mr. **Synar**. There are two points to be made here. First, one point is the logistics of why it took since December to get it to the subcommittee. I will throw that aside. You are getting better. You know, we got the testimony 5 minutes before the deadline. You get extra points for that.

The second part of the question is this: The information which we requested back in December seems to me to be very important information for future audits. Am I correct?

Mr. **Ewing**. Yes, sir.

Mr. **Synar**. Why has it been just until recently that it took you to get that put together and program the computer in Denver?

Come on up.

Mr. **Christensen**. I might indicate that Mr. Ewing has just been onboard since March. He heads up the new Finance and Accounting Office that was established, as recommended by the IG.

Mr. **Synar**. OK. Now, what was your answer?

Mr. **Christensen**. I was just indicating that Mr. Ewing has just come onboard in the last several months.

Mr. **Synar**. We went through this in our office.

Mr. **Christensen**. I understand.

Mr. **Synar**. No more honeymoons.

Mr. **Christensen**. I understand that. However, this falls under him, he is concerned about it, and it will not take that long to do from this point on.

Mr. **Synar**. I am sorry?

Mr. **Christensen**. It will not take that long to get these kind of reports from this point on. We recognize they are important, and we will be getting them.

Mr. **Synar**. I figure that if there are 29 fee compliance officers nationally in 1984, which is what our numbers say, who spent 28 percent of their time actually conducting audits, that is 29 times 0.28, which is about 8.12. And that means basically there was less than nine auditors working full time.

Now, OSM has identified more than 9,000 active mines. The inspector general has reported that in September 1983 Kentucky alone had 2,334 unaudited mines and the 6-year records retention period was at hand.

Now, considering all these facts that I just read to you, how can anyone at OSM be confident that the amount of unreported debt is not significant?

Mr. **Christensen**. Well, first of all I might clarify the record somewhat. The auditors were spending much more than 28 percent of their time doing audits or audit-related work. The management reports that we did on several offices indicated that there were instances where some auditors were spending up to 40 percent of their time doing unrelated work. That is something that is of concern to us and we are going to correct immediately.

There is another action that we are going to take which is very important: making sure that these auditors report to Washington, to a superviser who is only concerned about auditing, rather than reporting to the field office director who has a lot of other concerns besides just these reports.

Mr. **Synar**. Information previously placed in the record shows that fee compliance officers in the Tennessee and Pennsylvania areas have a heavier mine load per auditor than the fee compliance auditors in Kentucky. Now, based on the total number of 1,200 audits actually conducted nationally during 10 months in 1984, it looks like the 29 auditors are averaging about 50 audits per year. At that rate, auditors in these heavy workload areas will not be able to conduct their audits before the 6-year recordkeeping time runs out.

Do I understand correctly that the current distribution of fee compliance officers is based on decisions made during the reorganization of OSM in 1981?

Mr. **Christensen**. I believe that is true.

Mr. **Synar**. What are you doing to correct possible workload imbalances?

Mr. **Christensen**. For one, we are looking to see where the imbalance is, and I believe that has been pointed out to us. And our concern is that we rectify that by doing several things. One is, as I suggested, making sure that the auditors spend full time doing auditing work. Second, that from Washington they are helped and suggested on where they should do audits. Third, we are developing a model currently that will help us identify where we should be auditing, which companies are most liable to either have a problem, be unable to pay AML fees, may be currently ready to fail—so that we can make sure that we audit those firms quickly before they have a problem.

Mr. **Synar**. Would you submit all that information with respect to workload distribution when that is all completed?

Mr. **Christensen**. Certainly.

Mr. **Synar**. Thank you very much.

[The information follows:]

The distribution of auditors and mine and entities which affect workload is shown on the following table. However, the list of reporting and non-reporting entities is not a measure of actual workload (e.g., there may be numerous "entities" for a single mine.)

OSM is reanalyzing the actual workload, beginning with the identification of company accounting centers where the books and records are located. This information will then be correlated with the information on the following table to identify the number of entities related to each of the accounting center locations (i.e., multiple MSHA ID #'s for a company and multiple companies, branches, subsidiaries for an accounting center.) This reevaluation is expected to be completed by October 1985.

Distribution of Workload and Auditors

| | Reporting Entities | Non-Reporting Entities | Auditors |
|---|---|---|---|
| Harrisburg Field Office | 1,485 | 1,303 | 4 |
| Charleston Field Office | 1,674 | 2,164 | 6 |
| Big Stone Gap Field Office | 796 | 2,035 | 2 |
| Lexington Field Office | 3,990 | 4,390 | 11 |
| Knoxville Field Office | 519 | 610 | 3 |
| Birmingham Field Office | 161 | 1,016 | 2 |
| Columbus Field Office | 347 | 351 | 2 |
| Indianapolis Field Office | 175 | 428 | 1 |
| Kansas City Field Office | 97 | 265 | 1 |
| Albuquerque Field Office | 192 | 238 | 1 |
| Totals | 9,436 | 12,800 | 33 |

Mr. **Synar**. Mr. Clinger, do you have any questions?

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. Christensen, I gather from your responses to the chairman's questions, which I believe were based on 1984 performance——

Mr. **Christensen**. Yes, sir.

Mr. **Clinger** [continuing]. That you have, in fact, initiated a number of changes to remedy some of those deficiencies; is that correct?

Mr. **Christensen**. Yes, sir, we have.

Mr. **Clinger**. Specifically, do you now have a followup tracking system for audits?

Mr. **Christensen**. I believe that we are in the process of developing that right now. The problem has been recognized, we have had a report tell us that needs to be done and how to do that, and it is a matter of implementing that.

Mr. **Clinger**. But you do, indeed, have that in——

Mr. **Christensen**. In the planning process, that is right.

Mr. **Clinger**. To be implemented sometime this year?

Mr. **Christensen**. Shortly. Yes, sir.

Mr. **Clinger**. I apologize for not having been here during most of the questioning, so this may be repetitive. But I understand that you have approved a reorganization plan to deal with some of the problems.

When will that reorganization plan be implemented; is that in draft form now?

Mr. **Christensen**. Sir, that should be finalized and in place by October.

Mr. **Clinger**. Again, Mr. Chairman, I think the plan is something that we ought to have for our purposes.

Mr. **Synar**. Absolutely. And we will request that, too.

Mr. **Christensen**. As soon as that is finalized, I will submit that to this committee.

[The information follows:]

Attached is the implementation plan for the AML Fee Compliance program. Status and target completion dates are noted.

## Implementation Plan for Realignment of AML Fee Compliance Program

| Tasks | Target Completion Date |
|---|---|
| 1. Initial consultation/negotiation with NFFE - Local #1993 1/ | 7/10/85 |
| 2. Brief LLM staff on proposed changes 1/ | 7/12/85 |
| 3. Brief PBA staff on proposed changes 1/ | 7/12/85 |
| 4. Prepare Departmental Manual change and submit to PBA for approval 1/ | 7/26/85 |
| 5. Identify and develop budget resources 1/ | 7/31/85 |
| 6. Develop position descriptions for new positions | 9/30/85 |
| 7. Classification/grade structure of new positions | 9/30/85 |
| 8. Notify employees of transfer to F&A | 10/15/85 |
| 9. Final consultation with union | 10/15/85 |
| 10. Transfer fee compliance function to AD-F&A | 10/15/85 |
| 11. Issue job announcements for new positions | 11/1/85 |
| 12. Notify employees of reassignment | 11/15/85 |
| 13. Issue advance notice of employees who are to physically transfer | 11/15/85 |
| 14. Physical relocation takes place | 12/31/85 |

---

1/ Items have been completed.

Mr. Synar. I might also point out that up to 1984, you all didn't know anything about the audits, did you? You really didn't have basic data on that?

Mr. Christensen. I believe you are correct.

Mr. Clinger. On the subject of reorganization and specifically with regard to field office operation, the IG's criticisms with regard to decentralized structure, workload imbalances, quality control, et cetera, were alluded to earlier. You may have responded, but are you beginning to deal with those problems? Have you dealt with any of these problems?

Mr. Christensen. Yes, sir. The IG was absolutely correct, and there are problems there, and we have corrected those.

Mr. Clinger. They are now corrected?

Mr. Christensen. Well, we are in the process of correcting those right now.

Mr. Clinger. Thank you very much, Mr. Chairman.

Mr. Synar. Thank you, Mr. Clinger.

We will have to recess. I hope to finish within the next 30 minutes. We have got this vote, and following that maybe a 5-minute vote and we will be right back.

We are recessed.

[Recess taken.]

Mr. Synar. The subcommittee will come back to order.

It has been a year since OSM's regulation regarding the use of written notices for failure to pay reclamation fees were promulgated, and it has been 9 months since the issuance of the October 2, 1984, directive establishing OSM's procedures for revocation of an operator's permit for failure to pay.

The October 2, 1984, directive provides for the development of a violator list as a first step in getting these permits revoked. The inspectors then are to use that information to write the notices of violations.

When were those lists given to the inspectors?

Ms. Thompson. There is a list and it has been in existence since, I would say, 1978. it is produced on a quarterly basis and it is available to the field offices.

Mr. Synar. That is not the list I am talking about. I am talking about the notices of violations for failure to pay reclamation fees pursuant to the 1982 directive—1984 directive, I am sorry.

Mr. Close. The regulations which we promulgated in July 1984 requiring the payment of AML fees, first of all, govern only OSM's direct actions. We expect the States to incorporate those regulations into their programs. The States are the first line of action in these cases for suspension, revocation or other enforcement action.

To date, the States have not included them. They are being required to make those changes as part of the overall changes required to comply with the OSM Regulatory Reform Act.

Mr. Synar. Let's go back here. Are those lists that I asked you about used to write notices of violations?

Mr. Close. Generally not. We do use NOV's in a case, ourselves, where a State fails to act. And in that instance we have written a limited number of violation notices, some 133 to date.

Mr. Synar. How many?

Mr. Close. 133.

Mr. **Synar**. Mr. Esposito testified that almost half of the more than $30 million in delinquent debt is owed by operators of active mines. Now apparently the money is there to be collected if you will just go after it in the permit process, as your own procedures provide.

Mr. Ewing, can I get your commitment that the appropriate list will be distributed next week?

Mr. **Ewing**. Yes, sir.

[The information follows:]

Assistant Director Ewing indicates NOV list for failure to pay reclamation fees will be distributed week of July 15. Provide supporting documentation for the record.

Note: Copy of Mines Owing Money Report (as of 8/8/85) is attached for committee review.

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United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 25065
Denver Federal Center
Denver, Colorado 80225

July 18, 1985

Memorandum

To: All Field Office Directors

From: Chief, Division of Financial Management

Subject: Review and Action on Non-Respondents Report

Rep. Synar, in hearings conducted July 11, 1985, requested that OSM inspectors review and investigate the Non-Respondents Report to insure that these operators are in fact appropriately classified as non-respondents rather than not reporting and avoiding the law.

In this regard, the Assistant Director, Program Operations and Inspection has requested me to provide each field office the attached information.

Richard P. Griffith

Attachment

BEST COPY AVAILABLE

## ROUTING AND TRANSMITTAL SLIP

Date 08-01-85

| TO: (Name, office symbol, room number, building, Agency/Post) | Initials | Date |
|---|---|---|
| 1. To All OSM Field Office Directors | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |

| | | | | | |
|---|---|---|---|---|---|
| ☐ | Action | ☐ | File | ☐ | Note and Return |
| ☐ | Approval | ☐ | For Clearance | ☐ | Per Conversation |
| ☐ | As Requested | ☐ | For Correction | ☐ | Prepare Reply |
| ☐ | Circulate | ☐ | For Your Information | ☐ | See Me |
| ☐ | Comment | ☐ | Investigate | ☐ | Signature |
| ☐ | Coordination | ☐ | Justify | ☐ | |

REMARKS

The Assistant Director, Program Operations and Inspection has requested that the attached Mines Owing Money Report be provided each field office for review and action.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) Division of Financial Management

Room No.—Bldg.

Phone No. 776-0349

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ GPO : 1982 O - 381-529 (229)

[redacted]

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## MINES OWING MONEY (MOM) REPORT

## LEGEND

1. Mine ID - This gives the 7 digit Mine Safety and Health Administration number. It also gives a sequence number (used to uniquely identify an operation if it has been sold or transferred to different operator), and the type of mine (s=surface, u=underground).

2. Responsible Party - this gives the name and address of the responsible party for the payment of reclamation fees.

3. Contact - the name of a person to contact who is knowledgeable of the company's production.

4. Comp Code - company code to identify linkage and relationships of companies (not fully developed).

5. Permittee - the name and address of the permittee if available or provided.

6. Phone - the phone number of the company.

7. Permit Number - the permit number(s) if available or provided.

8. Current Status - the status of the operation whether active or inactive.

9. Fee Due - the principal of the debt owed to OSM.

10. Interest Due - the interest owed to OSM.

11. Total Due - the total debt owed to OSM.

12. Bill Status Info -

YYQ year and quarter and
BS bill status for that quarter

01 = in billing with OSM
02 = installment agreement
03 = installment agreement
04 = Solicitor
05 = collection agent
06 = Department of Justice
07 = filed and paid
08 = filed and paid
09 = bankrupt

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PGM LF7525/LF752581                OFFICE OF SURFACE MINING                           REPORT NO LF7-525
RUN DATE 08/20/85                  MINES OWING TOTAL MONIES OVER     $1                        PAGE   2

FIELD-OFFICE 01
STATE  PENNSYLVANIA         (42)
                  ②                  ④          ⑤                          ⑧            ⑨          ⑩              ⑪
①  MINE-ID  RESPONSIBLE PARTY                COMP CODE  PERMITTEE                CURRENT
                                                                                 STATUS     FEE DUE    INTEREST DUE   TOTAL DUE
   3606398  A & D COAL CO
     02  U  R D 1 BOX 32 A                                                         A         $27.87        $ .42        $28.29
            DORNSIFE        PA  17823
            (    )                               (    )       ⑥                ⑦
   ③   CONTACT   DONALD REBUCK                                 PHONE  (717) 758-8062  PERMIT NUMBER

⑫                   YYQ BS YYQ BS YYQ BS
   BILL STATUS INFO 843 01 844 01 851 01

   3604313  A & H COAL CO INC                    A & H COAL CO INC                    I        $14827.66    $4174.45     $19002.11
     01  S  BOX 215                              BOX 215
            SHINNSTON      WV  26431             SHINNSTON      WV  26431
            (304) 592-0173                       (    )

        CONTACT   WATER HAASS                                  PHONE  (304) 592-0173  PERMIT NUMBER  1361-1,2,3,4,5,6

                    YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS
   BILL STATUS INFO 791 09 792 09 793 09 794 09 801 09 802 09 803 09

   3607031  A & T ASSOC INC                      A & T  ASSOCIATES, INC               I        $31024.28    $13279.90    $44304.18
     01  S  1110 VERMONT AVE NW      SUITE 930   1110 VERMONT AVE NW      SUITE 930
            WASHINGTON    DC  20005              WASHINGTON    DC  20005
            (    )                               (    )

        CONTACT   CHARLES E WYNOSKY                            PHONE  (717) 695-3157  PERMIT NUMBER  201313

                    YYQ BS
   BILL STATUS INFO 813 05

   3601868  A & T ASSOCIATES INC                                                      I        $15541.85    $5383.20     $20925.08
     01  S  PO BOX 66
            TREMONT          PA  17981
            (717) 695-3157                       (    )

        CONTACT                                                PHONE  (717) 695-3157  PERMIT NUMBER

                    YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS
   BILL STATUS INFO 794 09 801 09 802 09 803 09 804 09

   3604255  A H R S COAL CORP            A1460                                        I         $9205.00    $3980.76     $13185.76
     01  S  BOX A
            BRUIN            PA  16022
            (    )                               (    )

        CONTACT                                                PHONE  (    )          PERMIT NUMBER

                    YYQ BS YYQ BS YYQ BS YYQ BS
   BILL STATUS INFO 774 09 781 09 782 09 783 09
```

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PGM LF7S25/LF7S25B1                 O F F I C E   O F   S U R F A C E   M I N I N G                REPORT NO LF7-S25
RUN DATE 08/08/85                      MINES OWING TOTAL MONIES OVER      $1                                PAGE  523

FIELD-OFFICE  10
STATE  WASHINGTON          (53)

                                                                                  CURRENT
MINE ID  RESPONSIBLE PARTY           COMP CODE PERMITTEE                          STATUS        FEE DUE  INTEREST DUE      TOTAL DUE

COUNTY:  LEWIS                (041)

4502698  OLD KING COAL CO INC                                                       A        $6777.77       $999.08       $7776.85
  01  S  107 S TOWER
         CENTRALIA       WA  98531
         (   )                             (   )

         CONTACT:                                         PHONE: (    )          PERMIT NUMBER:

                     YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS YYQ BS
BILL STATUS INFO     794 04 801 04 802 04 803 04 804 04 811 04 812 04 841 04 842 04 843 04 844 04 851 04

COUNTY TOTALS                NUMBER OF MINES:    1                                       $6777.77       $999.08       $7776.85

STATE TOTALS                 NUMBER OF MINES:    1                                       $6777.77       $999.08       $7776.85

FIELD-OFFICE TOTALS:         NUMBER OF MINES:   15                                     $216968.75     $68838.78     $285807.53

GRAND TOTALS:                NUMBER OF MINES: 2402                                 $24980246.39  $9434494.68  $34414741.07
```

Mr. SYNAR. OK. Mr. Esposito also testified that on April 2, 1985, only 24 companies nationwide were issued cessation orders for nonpayment of delinquent AML fees.

Mr. Close, of those 24 companies, how many had permits revoked for failure to pay reclamation fees?

Mr. CLOSE. I am not aware that any have been, sir.

Mr. SYNAR. Has OSM issued 10-day notices to the States on these companies?

Mr. CLOSE. I would have to provide that for the record. I do not know.

Mr. SYNAR. OK. Please do with dates.

[The information follows:]

1. Of 24 companies issued cessation orders for nonpayment of delinquent AML fees, have any had permits revoked?

   One permit was revoked for Sugar Creek Co., Kentucky owned by Hardly Able Coal Co.

2. Provide a list of ten day notices issued for nonpayment to states and date of issuance. (See attached list.)

Question: For the cessation orders issued, has OSM issued Ten-Day Notices to the States?

| State | Operator | Ten-Day Notice Date | Federal Enforcement Action | Status |
|---|---|---|---|---|
| Alabama | Black Panther Coal Co. | 4-1-85 | NOV/FTA CO | Unabated |
| | International Coal Co. | 1-2-85 | NOV/FTA CO | Unabated |
| Virigina | Birchfield Mining, Inc. | 3-20-85 | NOV/FTA CO | Operator Paid |
| | NAS COAL Co., Inc. | None | NOV/FTA CO | Unabated |
| | RAE Energy, Inc. | None | NOV/FTA CO | Unabated |
| Pennsylvania | D. C. Industries, Inc. | 8-28-84 | NOV/FTA CO | Install Agreement |
| | Don's Excavating | 8-28-84 | NOV/FTA CO | Vacated by SOL |
| | R. K. Coal Co. | 8-28-84 | NOV/FTA CO | Unabated |
| | Grand[illegible]ay Coal Co. | 8-28-84 | NOV/FTA CO | Unabated |
| | James E. Martin | 8-28-84 | NOV/FTA CO | Unabated |
| | Richard Stanford | 8-28-84 | NOV/FTA CO | Install Agreement |
| | Spring Valley Coal Co | 8-28-84 | NOV/FTA CO | Install Agreement |
| | Black Hawk Coal Co. | 4-8-85 | NOV/FTA CO | Unabated |

| State | Operator | Ten-Day Notice Date | Federal Enforcement Action | Status |
|---|---|---|---|---|
| Ohio | Krueger Coal Co. | None | NOV/FTA CO | Unabated |
| | Hutt Coal | 6-13-84 | NOV/FTA CO | Unabated |
| | Carson Production | 2-8-85 | NOV/FTA CO | Install Agreement |
| Kentucky | Bright Coal | 2-10-84 | NOV/FTA CO | Unabated |
| | Frontier Coal | 2-10-84 | NOV/FTA CO | Unabated |
| | Gold Dust | 2-10-84 | NOV/FTA CO | Unabated |
| | L. P. Coal Co. | 2-10-84 | NOV/FTA CO | Install Agreement |
| | Lee Coal | 2-10-84 | NOV/FTA CO | Unabated |
| | V & B | 2-10-84 | NOV/FTA CO | Paid in Full |
| | Bright Coal | 2-9-84 | NOV/FTA CO | Unabated |
| | Frontier Coal | 2-9-84 | NOV/FTA CO | Unabated |
| | Gold Durt | 2-9-84 | NOV/FTA CO | Unabated |
| | L. P. Coal Co. | 2-9-84 | NOV/FTA CO | Install Agreement |
| | Lee Coal | 2-9-84 | NOV/FTA CO | Unabated |
| | V & B Coal | 2-9-84 | NOV/FTA CO | Paid in full |
| Maryland | Alpha Mining | None | NOV/FTA CO | Unabated |
| | Wilhelm Coal Co. | None | NOV/FTA CO | Unabated |
| Missouri | Yates Energy | 4-2-85 | NOV/FTA CO | Unabated |
| | Howard Coal Co. | 4-2-85 | NOV/FTA CO | Unabated |
| Arkansas | Great National Corp. | 1-17-85 | NOV/FTA CO | Unabated |
| | Great National Corp. | 4-1-85 | NOV/FTA CO | Unabated |
| Colorado | American Fuels | 9-7-84 | NOV/FTA CO | Unabated |

Mr. **Synar**. For some time now, the OSM has produced the "Mines Owing Monies" report. It lists delinquent mines according to State. By just flipping through this—this is the report here—it is fairly easy to spot mines with large amounts of fees outstanding; for example, there are amounts like $236,000 and $150,000. In comparing these reports from year to year, and from one year to the next, it is obvious that some of the companies are repeat delinquents.

My question to you all is, why hasn't OSM used this list that you mentioned earlier to target, say, the 100 most notorious delinquent companies and to seek revocation of their permits?

Ms. Thompson.

Ms. **Thompson**. I would have to ask Mr. Close to answer that question.

Mr. **Synar**. Mr. Close.

Mr. **Close**. Our first action in any of those cases is to ask the State to act. It is very difficult for us to move in and try to revoke a permit directly. So our first action was to supply that information to the States. Many have declined to do so.

The next avenue of action would be for us to issue an NOV if we felt we had the grounds to do so.

Mr. **Synar**. But as you stated, you haven't issued any NOV's, have you?

Mr. **Close**. We have issued 133. Some of the companies are bankrupt or in a chapter 11 proceeding, and in those cases we cannot issue an enforcement action for nonpayment of fees.

Mr. **Synar**. Well, let me see if I can get a commitment out of you. Will you use this report to do the types of things we are talking about?

Mr. **Close**. We will certainly look into increasing the number of enforcement actions to be taken, and we will do it.

Mr. **Synar**. No, no, no, no. That is an unacceptable answer. Do I have your——

Mr. **Christensen**. We will use the report, and we will do it.

Mr. **Synar**. OK. Thank you.

[The information follows:]

Director commits to using NOV Failure to Pay List for targeting delinquent companies. (Attached documentation for the record.)

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

August 29, 1985

Memorandum

To: Field Office Directors

From: Carl C. Close, Acting Assistant Director CAKendhan
Program Operations and Inspection

Subject: Enforcement Actions for Section 402 Violations

As indicated from the recent Congressional hearing on the reclamation fee program, Congressman Synar requested that a violators list be sent to the field for use in issuing notices of violations (NOV) for failure to comply with the payment and reporting requirements of Title IV of the Act. He referred to an October 2, 1984, memorandum on use of NOVs which specified, under "Pre-Enforcement Stage", that such a list would be issued quarterly by Denver.

Until Denver begins issuing this list--which will include still-active non-compliant operations which have not been issued an NOV (or a cessation order (CO) if a previously-issued NOV has not been terminated)--the monthly "Bills for Field Office Action" report should be used to identify those debtors who are to receive NOVs or COs. Non-respondents against whom similar actions are to be taken will be identified, with field assistance, through a compliance investigation procedure Headquarters has already initiated. Briefly, each quarter all supposedly active operations on the Master File who have been sent but have failed to return an OSM-1 will be reviewed by a contractor to determine whether failure to report may be due to an operational change (e.g., bankruptcy, change in ownership, dissolution, relocation) or has no apparently valid basis. If further OSM review of the latter cases fails to uncover and correct the causative problem (e.g., OSM-1 was not received by operation; OSM-1 was sent for one operator by another operator), the operator will be deemed to be in violation of the Act's reporting requirements, Headquarters will notify Denver of this fact and Denver will add the operator to the violators list.

Once debtors and non-respondents are identified you are to follow established procedures for issuance of an NOV and, if necessary, a CO, and for regular notification of Headquarters of the initiation, status and disposition of enforcement actions. Routine notification of the Division of Regulation and Inspection of such actions will ensure a centralized source exists for that information needed to keep the violators list current, accurate and complete (i.e., ensure it does not inadvertently contain operations that already have been issued an NOV and CO) and to correctly and expeditiously remove names from the violators list. Routine reporting format will be developed by September 15, 1985, for your review and comment to be implemented by October 1, 1985.

Questions regarding these instructions should be brought to the attention of Murray Newton, Acting Chief, Division of Regulation and Inspection (FTS 343-5866).

Mr. SYNAR. Mr. Kolter.

Mr. KOLTER. Thank you, Mr. Chairman.

Mr. SYNAR. I am sorry, Mr. Kolter, Mr. Clinger got back before you did.

Mr. KOLTER. Yes; he did.

Mr. SYNAR. Mr. Clinger.

With these Pennsylvania boys it is hard.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. Christensen, in the February 1985 audit, the inspector general generally gave OSM good marks with respect to taking action on their recommendations. What is your assessment of the IG's efforts? Have they been helpful to you? Do you think that they are unreasonable, or have they been generally constructive suggestions?

Mr. CHRISTENSEN. The IG's recommendations were well taken. We have considered them thoroughly and we propose to implement all of them. Most of them have been implemented or are in the process of being implemented. They were good suggestions, and were appreciated.

Mr. CLINGER. There are none that you have felt were unreasonable or not productive?

Mr. CHRISTENSEN. We don't always agree 100 percent with the IG, but in this case most of them were acceptable.

Mr. CLINGER. And you indicate that you are pursuing them and are going to be implementing all of those recommendations?

Mr. CHRISTENSEN. Yes, sir.

Mr. CLINGER. Mr. Esposito cited a comparison of EIA coal production figures with yours, based on 18 percent of the mines in the State of Kentucky in 1983. He found a shortfall in your production figures. You mentioned in your testimony a comparison done by OSM of total 1983 EIA and OSM production figures.

What was the result of your matchup?

Mr. CHRISTENSEN. We determined the results were fairly close once we understood exactly what the data provided. There was a discrepancy until we understood that they don't report small mines that do not gross over 10,000 tons. However, they do production facilities.

But once we realized that we had the data fairly close—you have to remember this is not mine by mine, but it is close data—that we weren't that far apart.

At some point, though, we are hoping that we can actually get the mine data to compare to the reports that are given to us, then we will know if there is an actual discrepancy. Currently we do not have that data.

I believe Mr. Esposito got that information, but he cannot share it with us.

Mr. **Clinger**. But at this point your feeling is that the discrepancy is relatively minor?

Mr. **Christensen**. It is not very far apart.

Mr. **Synar**. Can I ask a question here, Bill?

Mr. **Clinger**. Sure.

Mr. **Synar**. Has anybody asked the White House for help in getting this data? We got it, why can't you get it?

Let me cite specific regs on this. DOE has a policy governing disclosure of information regarding individual respondents. Let me ask unanimous consent that a copy of the policy be included in the record at this point.

[The information follows:]

## DEPARTMENT OF ENERGY

## DOE Policy on Disclosure of Individually Identifiable Energy Information in the Possession of the Energy Information Administration

**AGENCY:** Department of Energy.

**ACTION:** Notice.

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**SUMMARY:** In order to fulfill its legal responsibilities, the Energy Information Administration (EIA) collects information from individual respondents in various parts of the public and business communities. The EIA receives many requests for the energy information produced in these collection efforts. Such requests are normally honored by the EIA when they can be answered with aggregated information. Occasionally, requests are made for information concerning individual respondents. Current laws and regulations provide specific guidance to the EIA on the disclosure of this individually identifiable energy information to the public, the Congress, the General Accounting Office (GAO), and other offices in the Department of Energy (DOE). However, with respect to disclosure to other Federal agencies and the States, more discretion is generally allowed.

This policy is intended to guide the EIA and other DOE offices concerning the conditions and terms under which individual respondent information will be shared with other DOE components, the Congress, the GAO, other Federal agencies, and the States. It also addresses the disclosure of information collected or maintained by the EIA on behalf of the Federal Energy Regulatory Commission. The policy is a DOE policy—as opposed to an EIA policy—because, by law, other DOE offices have access to any information in the possession of the EIA, and thus, disclosure of EIA-collected data is a matter of Departmental concern.

**FOR FURTHER INFORMATION CONTACT:** John H. Weiner, Energy Information Administration, Room 6149, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461. (202) 633-8696.

**SUPPLEMENTARY INFORMATION:** A comprehensive disclosure policy statement has been under development since late 1977. There has been substantial review of, and comment on, various drafts of the statement from offices in DOE, other Federal agencies, members of Congress, and the public. An interagency meeting to discuss the development of the policy was held on November 30, 1977. A public hearing was held on February 9, 1978, following the publication in the Federal Register of a notice describing a series of proposed alternatives for a disclosure policy (see FR 2653, January 18, 1978). The draft policy has also been discussed at public meetings between the EIA and the American Statistical Association Ad Hoc Committee on Energy Statistics.

Both the 1978 proposal and the policy as adopted center around the issue of the extent to which individual identifiable energy information should be disclosed outside the DOE, particularly to other Federal agencies, and the appropriate purposes for such disclosure. Subissues include the distinction to be made between information collected for statistical and for regulatory purposes; whether and how the providers of information will be notifed of disclosures; the kind and amount of information that will be disclosed; the limitations to be placed on redisclosure; and the safeguarding of information.

In response to the Federal Register notice, 78 comments were received from the public, the Congress, and other Federal agencies. Most of the comments were from energy-related companies and other corporations, and from trade associations, including energy-related trade associations. A few comments were received from the Congress, most notably the energy and Power Subcommittee of the House Committee on Interstate and Foreign Commerce, and the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee. In addition, there were some comments from individuals in universities and elsewhere.

The comments tended to focus on the basic issue of whether information should be disclosed to other Federal agencies, and the appropriate purposes for which it might be disclosed rather than on the subissues described above. The general pattern of the comments reflected a dichotomy between a "pro-disclosure" and an "anti-disclosure" view. In general, the users of information, including the Congress and other government agencies, favored increased availability of energy information. These comments cited the need to have data available for purposes such as additional legislation, monitoring of existing programs, and the enforcement of energy laws. The providers of information, on the other hand, tended to oppose wider disclosure of energy information, asserting that widespread disclosure could place them at a competitive disadvantage. Further, the "anti-disclosure" commenters expressed the view that information collected for statistical purposes should not, in fairness be used for regulatory purposes. In addition to the fairness question, the difficulty in distinguishing between statistical and regulatory data was noted, as was the difficulty of safeguarding and preserving the confidentiality of sensitive corporate information.

The case against wider disclosure of energy information rests on a concern for EIA's ability to obtain credible energy information, as required by the DOE Organization Act (see section 205, DOE Act, Pub. L. No. 95-91), and on the concept of fair information practices. Somewhat ironically, the latter can work against the former: it is considered a matter of good practice to inform the providers of information of its intended uses, whether statistical or regulatory, and the potential interagency disclosures. Yet, informing respondents that their replies may be made available to an enforcement agency, with possible punitive or adverse consequences, can make the respondents reluctant to provide information, and thus adversely affect its validity or availability. Making information collected for statistical purposes available for enforcement and regulatory purposes thus can pose a threat to the accurate and timely reporting of information vitally needed by the Congress, the Administration, and the public to understand the current energy situation and policy issues.

The principle that the defensively-oriented respondent produces poorer data is uniformly accepted in the statistical profession, both within and without the Government. Therefore, in order to preserve the integrity of statistical data, Federal statistical agencies such as the Census Bureau and the Bureau of Labor Statistics are constrained by law or regulation from disclosing individual respondent data.

There are, however, compelling arguments to support a case for fuller interagency disclosure. Under the DOE Organization Act, the EIA has broader obligations than do the purely statistical Federal agencies. DOE is mandated to foster competition in the energy industries and to assure compliance with laws within DOE's enforcement jurisdication. While DOE was given these responsibilities, much of the enforcement authority rests with the Department of Justice and the Federal Trade Commission. The DOE and the EIA can contribute to fulfilling these obligations by collecting and maintaining energy information that can be used in responding to requests from enforcement agencies for energy information. Failure to do so might lead to a feeling that the interests of consumers and the general public are not being fully represented. To counter the argument that adequate information will not be provided, it is noted that the DOE's statutes empower DOE to require the submission of data, and give DOE means to enforce that requirement. Thus, regardless of the uses to which information will be put, respondents must provide it under the law. The enforcement of data collection requirements, however, is cumbersome and time consuming, and thus can potentially reduce the timeliness and quality of the reported information.

The disclosure policy, as adopted, is intended to strike a balance between the conflicting goals of maintaining the statistical integrity of the EIA data base and serving the legitimate needs of enforcement officials. The policy is intended to balance the competing goals by providing for disclosure only under enumerated conditions, with limitations on the redisclosure of information by those to whom it is provided. Notification to respondents, on data collection instruments and, in some cases prior to actual disclosure, is also provided.

Briefly, data will be disclosed—

- To the public to the extent required by the Freedom of Information Act (5 U.S.C. 552).
- To the Congress and to the General Accounting Office, as required by statute.
- To other components of the DOE, as required by the DOE Organization Act, although in order to protect the integrity of statistical data, components will in general not request information that is part of a statistical sample, or information on individuals, families, and households.
- To other Federal agencies and to States if—
  —The data are available to the public;
  —Disclosure is required by the terms of the statute under which the information was collected;
  —The data were collected for regulatory purposes;
  —Notice has been given to the provider;
  —The data, whether regulatory or statistical, will be used for statistical purposes only;
  —The provider has consented to the disclosure;
  —A court has ordered the disclosure; or
  —The President has directed the disclosure.

This brief summary does not, of course, include all of the detailed provisions of the policy, and reader are therefore urged to read carefully its full text, which is set forth below.

### Doe Policy on the Disclosure of Individually Identifiable Energy Information in the Possession of the EIA

This Department of Energy (DOE) policy applies to all components of the DOE with respect to the disclosure, and the conditions which attach to such disclosure, of Individually Identifiable Energy Information in the possession of the Energy Information Administration (EIA). Specifically, the policy addresses disclosures which may be made (1) to the public, (2) pursuant to a Court Order, (3) to the General Accounting Office (GOA), the Congress or any duly established Committee of the Congress, (4) to other components of the DOE, and (5) to other agencies and organizations. Individually Identifiable Energy Information known by the EIA and the affected respondents to be already publicly available shall be made available to any party upon request and will not be subject to any of the provisions which follow. Part I of the policy addresses information in the possession of the EIA other than that which is collected or maintained on behalf of the Federal Energy Regulatory Commission (FERC). Part II addresses information collected and maintained by the EIA on behalf of the FERC. Definitions of key terms are contained in the Appendix.

I. Information in the possession of the EIA (not collected or maintained on behalf of the FERC)

A. Disclosure to the Public

1. If any member of the public requests in writing, whether under the Freedom of Information Act (FOIA) or otherwise, disclosure of Individually Identifiable Energy Information in the possession of the EIA, the EIA will disclose such information when (a) the requested information is known by the EIA to be already publicly avaiable; (b) disclosure would be in the public interest as determined by the EIA and the information is not prohibited from being disclosed by statute, Executive Order or regulation; or (c) required to do so by the FOIA and DOE implementing regulations or by another statute.
2. For Individually Identifiable Energy Information collected or maintained by the EIA on behalf of another component of the DOE, that other component will determine, in consultation with the EIA, whether to make public disclosure of the information and will respond to the request.
3. Specific written notice of any intended public disclosure shall be provided to all affected respondents in accordance with the terms of the DOE FOIA implementing regulations.

B. Disclosure Pursuant to a Court Order

1. The EIA shall disclose Individually Identifiable Energy Information in its possession when required to do so by the Order of a Court of competent jurisdiction, and shall advise the Court, as appropriate, that the information may be confidential information which is prohibited from disclosure to the public by 18 U.S.C. 1905.
2. For information collected or maintained by the EIA on behalf of another component of the DOE, the EIA shall consult with such component prior to making such a disclosure.
3. Specific written notice of any such intended or actual disclosure shall be provided to all affected respondents at the earliest practicable time.

C. Disclosure to the GAO and Congress

1. Except as otherwise authorized by law, the EIA shall disclose any Individually Identifiable Energy Information in its possession, upon written request, to the GAO, the Congress or any duly established Committee of the Congress and shall advise them with respect to the DOE policy regarding disclosure of such information and, as appropriate, that the information may be confidential information which is prohibited from disclosure to the public by 18 U.S.C. 1905.
2. For information collected or maintained by the EIA on behalf of another component of the DOE, the EIA shall consult with such component prior to responding to such a request.
3. Henceforth, the EIA shall inform affected respondents, prior to collection, that the information they submit will be disclosed, upon request, to the GAO, the Congress, or any duly established Committee of Congress.
4. Subsequent disclosures of such information will be subject to the applicable rules and laws governing the GAO, the Congress, or the Committee of Congress.

D. Disclosure to Other Components of the DOE

1. Except as otherwise authorized by law, the EIA shall disclose to any other component of the DOE, upon written request, any Individually Identifiable Energy Information which such component determines to be related to its functions. The

EIA shall advise such component, as appropriate, that the information may be confidential information which is prohibited from public disclosure by 18 U.S.C. 1905.

2. Other components of the DOE will not ordinarily request, for other than statistical purposes, Individually Identifiable Energy Information which relates to individuals, families, or households, or which has been collected on a sample basis from a particular group of respondents.
3. For information collected or maintained by the EIA on behalf of another component of the DOE, the EIA shall consult with such component prior to responding to a request from any other component of the DOE.
4. Henceforth, the EIA shall inform affected respondents, prior to collection, that the information they submit will be disclosed, upon request, to other components of the DOE.
5. With regard to subsequent disclosure, any component of the DOE that has obtained Individually Identifiable Energy Information from the EIA:

a. shall not make any public disclosure of such information without obtaining the concurrence of the EIA, except that such component may, after consultation with the EIA, make public disclosure of such information (i) in the course of an administrative or judicial proceeding sponsored by such component or to which such component is a legal party, (ii) in response to an FOIA request when the request is for information collected or maintained by the EIA on behalf of that component, or (iii) when required to do so upon the Order of a Court of competent jurisdiction. Under this subsection, public disclosure does not include disclosure to public officials assisting the DOE in administrative or judicial proceedings sponsored by the DOE or to which the DOE is a party. The DOE component shall give all affected respondents (i) not less than seven calendar days written notice of any intended public disclosure, except when disclosure is required pursuant to the Order of a Court of competent jurisdiction, and (ii) written notice at the earliest practicable time of intended or actual public disclosure required pursuant to the Order of a Court of competent jurisdiction.

b. shall refer to the EIA, or to that component of the DOE on whose behalf the EIA collects or maintains the information, for response, in accordance with the provisions of Section I.A., that portion of any FOIA request encompassing such information. This subsection does not apply in the case of Individually Identifiable Energy Information which has been incorporated into an agency record (within the meaning of the FOIA) of the FERC, in which case the FERC may respond to such FOIA requests, after consultation with the EIA.

c. shall consult with the EIA prior to responding to any request for such information from the GAO, the Congress, or any duly established Committee of Congress.

d. shall refer to the EIA for response any request for such information from another agency of the Federal government, from another component of DOE or from a State, except where EIA has authorized such disclosure in advance.

E. Disclosure to Other Agencies of the Federal Government or to a State

1. Except as otherwise authorized by law, Individually Identifiable Energy Information in the possession of the EIA shall be liable to disclosure to another agency of the Federal Government or to the chief executive officer of a State:

a. if the information would be disclosed to the public under the provisions of Section I.A.1.; or

b. if the information was collected under the authority of any law which provides by its own terms for disclosure of information collected under that law to named agencies, in which case disclosure shall be made in accordance with the terms of that law; or

c. if the information, as determined by the EIA and the component on whose behalf the information was collected and maintained in their discretion, was collected primarily for compliance/enforcement or benefit/action purposes; or

d. if notice of intended interagency or State disclosure was provided to affected respondents prior to the collection of information; or

e. if the requesting agency or State provides effective assurance in writing that the information is to be used by that agency or State for statistical purposes only; or

f. if the consent of the affected respondent has been received by the EIA; or

g. if required to do so upon the Order of a Court of competent jurisdiction; or

h. if required to do so at the direction of the President.

2. The determination whether notice will be given so that information collected for other than compliance/enforcement or benefit/action purposes may be liable to interagency or State disclosure pursuant to section I.E.1.d. above will be made as follows: The EIA will provide other interested components of the DOE, including, but not limited to, the Office of the General Counsel and the Economic Regulatory Administration, the opportunity to review proposed data collections. The components will advise the EIA if they believe there is a demonstrable need to disclose the information to other Federal agencies or States. If so, the components will request that notice to that effect be given on the data collection form. If the EIA denies the request, the other components may request that the Deputy Secretary consider the EIA decision. This consultation will be made prior to the final approval of new or revised data collection forms. This procedure will not be applicable for data collection forms which relate to individuals, families, or households, or which will collect information on a sample basis from a particular group of respondents.
3. Except as provided in I.E.1. above, Individually Identifiable Energy Information shall not ordinarily be liable to disclosure to another agency of the Federal government or the chief executive officer of a State.
4. For Individually Identifiable Energy Information collected or maintained on behalf of another component of the DOE, the EIA shall consult with that component prior to making such a disclosure. If the EIA and the other component of the DOE do not agree on whether the data should be disclosed, the matter shall be resolved by the Deputy Secretary.
5. The EIA shall advise the recipient agency or State, as appropriate, that the information may be confidential information which is prohibited from public disclosure by 18 U.S.C. 1905.
6. Respondents will be notified of potential or actual interagency or State disclosures as follows:

a. Henceforth, the EIA will inform affected respondents, prior to the collection of information, as to whether, and the conditions under which, the information to be collected is liable to interagency or State disclosure.

b. In all instances of actual interagency or State requests to the EIA for the disclosure of Individually Identifiable Energy Information where the EIA determines that the requested information will be disclosed, the EIA shall specifically notify all affected respondents, in writing to their last known address, not less than seven calendar days prior to each such proposed disclosure except that (i) notice need not be given where respondents have already been provided notice of the possibility of actual disclosure, or where the requesting agency or State has provided effective assurance that the information will be used for statistical purposes only; and (ii) notice will not be given where the information was collected for compliance/enforcement or benefit/action purposes, and the requesting Federal agency is undertaking the prosecution of a specific person for a probable violation of a law within DOE's enforcement jurisdiction, unless otherwise provided by the terms of the data collection.

c. When interagency or state disclosure is required pursuant to the Order of a Court of competent jurisdiction or at the direction of the President, the EIA shall notify all affected respondents of the intended or actual disclosure in writing at the earliest practicable time.

7. Where one or more of the conditions under Section I.E.1. is applicable, the EIA may disclose Individually Identifiable Energy Information to another Federal agency pursuant to a written request which meets the conditions set forth below.

a. the request shall stipulate that the information requested is necessary to the requesting agency in carrying out its lawful duties and responsibilities;

b. the requesting agency shall agree to make no subsequent disclosure of such information except (i) in response to an FOIA request, (ii) in response to a written request from the GAO or from the Congress or any duly established Committee of Congress, (iii) when considered to be essential in the course of an administrative or judicial proceeding sponsored by the requesting agency or to which the requesting agency is a legal party, or (iv) when required to do so upon the Order of a Court of competent jurisdiction;

c. the requesting agency, in responding to an FOIA request for such information (i) will consult with and give great deference to the views of the EIA in determining whether such information falls within one or more of the FOIA exemptions from mandatory disclosure; provided, however, that where the pertinent regulations of the requesting agency permit the referral of an FOIA request for records or information originating in another agency to the originating agency, the reqeusting agency shall refer any request for such records or information to the EIA for response; and (ii) will not make a public release of any information which falls within an exemption from mandatory disclosure;

d. the requesting agency shall (i) in the case of disclosure pursuant to an FOIA request or in connection with any proceeding, give the EIA and the original respondent not less than seven calendar days written notice of the intended disclosure, (ii) in the case of the Order of a Court of competent jurisdiction, give the EIA and the original respondent of such information written notice of the intended or actual disclosure at the earliest practicable time, and (iii) in the case of intended disclosure to the GAO, the Congress, or any duly established committee of Congress, notify the EIA in writing prior to the intended disclosure; and

e. the requesting agency shall refer any other request for such information to the EIA for response.

8. Where one or more of the conditions under Section I.E.1. is applicable, the EIA may disclose Individually Identifiable Energy Information to a State pursuant to a request which meets the conditions set forth below. Such requests must be made in writing by the chief executive officer of the State. Normally, responses to such requests will be limited to information concerning activities within the State which has requested the information. The State must:

a. stipulate that the information requested is necessary to the requesting State in carrying out its lawful duties and responsibilities;

b. agree to make no subsequent disclosure of the information except as authorized in advance by the EIA;

c. agree to refer to the EIA for response any request for disclosure of such information that the EIA has not authorized in advance;

d. provide assurance that State law and regulations will not require the disclosure of information which is determined by the EIA not to be publicly available; and

e. agree to return to the EIA all such information prior to the effective date of any subsequently adopted law or regulation which would be in conflict with these conditions.

### F. Security Measures

Any party requesting Individually Identifiable Energy Information shall certify in writing that appropriate administrative, technical, and physical security measures to protect such information from unauthorized disclosure will be in place prior to any transfer of such information

### G. Authorization to disclose information collected or maintained by the EIA on behalf of another component.

For Individually Identifiable Energy Information which was collected or is maintained by the EIA on behalf of another component, that component is authorized to disclose such information after consultation with the EIA and in accordance with the procedures of Section I.A. through I.F. above.

## II Information Collected or Maintained by the EIA on Behalf of the FERC

### A. Disclosure to the Public

The EIA shall refer to the FERC, to the extent permissible by the FOIA and DOE's implementing regulations, any requests by a member of the public for Individually Identifiable Energy Information collected or maintained by the EIA on behalf of the FERC. The FERC shall respond directly to such requests after consultation with the EIA.

### B. Disclosure Pursuant to a Court Order

The EIA shall disclose Individually Identifiable Energy Information collected or maintained by the EIA on behalf of the FERC when required to do so pursuant to the Order of a Court of competent jurisdiction. The EIA shall consult with the FERC prior to making such a disclosure and notify all affected respondents of any such intended or actual disclosure in writing at the earliest practicable time.

### C. Disclosure to GAO and Congress

The EIA shall consult with the FERC prior to responding to a request from the GAO, the Congress, or any duly established Committee of Congress for any Individually Identifiable Energy Information collected or maintained by the EIA on behalf of the FERC.

### D. Disclosure to Other Components of DOE

The EIA shall disclose any Individually Identifiable Energy Information collected or maintained by the EIA on behalf of the FERC, upon request, to any other component of the DOE. The EIA shall consult with the FERC prior to making any such disclosure. However, other components of DOE will ordinarily request such information directly from the FERC. No component of DOE shall make any subsequent disclosure of such information until it has consulted with and obtained the concurrence of the FERC, as appropriate, prior to such disclosure.

### E. Disclosure to Other Agencies of the Federal Government or to States

The EIA shall refer to the FERC any requests by another agency of the Federal government or a State for Individually Identifiable Energy

Information collected or maintained by the EIA on behalf of the FERC. The FERC shall respond directly to such requests.

F. Security Measures

Any party requesting Individually Identifiable Energy Information collected or maintained by the EIA on behalf of the FERC shall certify, in writing, that appropriate administrative, technical, and physical security measures to protect such information from unauthorized disclosure will be in place prior to any transfer of such information.

G. Authorization to Disclose Information Collected or Maintained by the EIA on behalf of the FERC

For Individually Identifiable Energy Information which was collected or is maintained by the EIA on behalf of the FERC, the FERC is authorized to disclose such information after consultation with the EIA.

## Appendix—Definitions

1. Energy Information: All information in whatever form on (1) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (2) production, distribution, and consumption of energy and fuels wherever carried on; and (3) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investments, and assets, and other matters directly related thereto, wherever they exist.

2. Individually Identifiable Energy Information: any individual record or portion of a record or aggregated data containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person. Information provided to EIA by a unit of Federal, State, local or foreign government will be included on this definition if such information would qualify for exemption from mandatory disclosure under the Freedom of Information Act.

3. Person: any individual, family, household, proprietorship, partnership, corporation, association, business, institution, establishment, religious body or organization of any nature whatsoever, including departments, agencies and establishments of the United States and local governments, and foreign governments.

4. Energy information in the possession of EIA: all energy information collected or maintained by the EIA (whether collected or maintained for its own use or on behalf of any other component of the Department) and accessible by the EIA. This definition excludes and the policy is not applicable to energy-related information solely in the possession of another component of the DOE which was collected or obtained pursuant to (a) authority vested in that component by statute, (b) a delegation of authority from the Secretary of Energy, or (c) a redelegation of authority from the EIA Administrator.

5. Compliance/enforcement purpose: use of energy information gathered from a person for the purpose of assessing or enforcing the compliance of that person with a law, including regulations.

6. Benefit/action purpose: use of energy information submitted by a person seeking a benefit from, or action on the part of, the DOE.

7. Statistical purpose: use of energy information for the purpose of developing or reporting aggregate or anonymous information not intended to be used, in whole or in part, in any way in which the specific identity of any person is material to the intended use of the information. Included in this definition are the development of lists to be used in the conduct of a project with an exclusively statistical purpose and the pretesting and evaluation of procedures in such projects.

8. Other purpose: use of energy information for other than compliance/enforcement and benefit/action purposes, including, but not limited to, use of energy information for statistical purposes.

9. Respondent: a person who originally submitted information in response to a survey, data collection form, or any other data gathering effort.

10. Energy information collected or maintained by the EIA on the behalf of another component of the DOE: any energy information in the possession of the EIA which was either gathered by or submitted to the EIA at the specific request of the other component.

11. Energy Information collected or maintained by the EIA on behalf of the FERC: any energy information in the possession of the EIA which was either gathered by or submitted to the Federal Power Commission (FPC) or the FERC and subsequently transferred to the EIA, or gathered by or submitted to the EIA at the specific request of the FERC.

12. Component of the DOE: DOE principals (Secretary, Deputy Secretary, Under Secretary) and those DOE offices which report directly to the DOE principals, including the Special Assistant, the Executive Assistant, the Assistant to the Secretary (Public Affairs), the Assistant to the Secretary (Legislative Affairs), the Assistant Secretaries, the Chairman of the Board of Contract Appeals, the Inspector General, the General Counsel, the Director of the Office of Hearings and Appeals, the Chief Financial Officer, the Director of the Office of Minority Impact, the Director of Energy Research, the Economic Regulatory Administrator, the Director of the Office of Consumer Affairs, the Director of the Office of Intergovernmental Affairs, and the DOE Regional Representatives. The Federal Energy Regulatory Commission is also considered to be a DOE component.

13. State: the various States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

Issued at Washington, D.C., on September 5, 1980.

Charles W. Duncan, Jr.,

*Secretary.*

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BILLING CODE 6450-01-M

**Mr. Synar.** Section E of that policy establishes conditions for disclosure of such information to other Federal agencies, including the condition that EIA will disclose data to another agency "if required to do so at the direction of the President."

Now, my question: Has anybody asked the White House for that information which Bill was talking about?

**Mr. Christensen.** No, sir. We have been working with EIA to change the regulation.

**Mr. Synar.** Why not? Why haven't you asked the White House?

**Mr. Christensen.** Well, we probably should.

**Mr. Synar.** Do I have your commitment that you will ask the White House for that information?

**Mr. Christensen.** I will work through the Secretary——

**Mr. Synar.** Yes or no. Do I have your commitment that you will ask for that information?

**Mr. Christensen.** Yes, through the Secretary.

**Mr. Synar.** OK. I am sorry.

**Mr. Clinger.** EIA data is considered the most complete by many doing these comparisons, but, as you indicated, it is unavailable at the present time. Could you outline the difficulty in getting reliable third-party production figures and what steps you might have taken in this regard to try and get the information for third-party production?

**Mr. Christensen.** Yes, Congressman. It is my understanding that third-party companies are not required to share information with us. It is on a voluntary basis; sometimes they will and sometimes they won't.

**Mr. Clinger.** Have you actually tried?

**Mr. Christensen.** Yes, we have tried to work with them but, and I will say it again, it is a voluntary kind of thing. They don't have to provide that information to us.

**Mr. Clinger.** So it is incomplete? It is spotty information?

**Mr. Christensen.** Yes.

**Mr. Clinger.** You get it from some but not from others?

**Mr. Christensen.** That is true.

**Mr. Clinger.** OK. Thank you.

**Mr. Synar.** Jolting Joe.

**Mr. Kolter.** Thank you, Mr. Chairman.

Let's talk a little bit about the failure of reporting production and tools; you have to insist on better reporting. Section 402(d) of the act provides that a coal mine operator who knowingly makes a false statement or who knowingly fails to report coal production can be fined up to $10,000 or imprisoned up to 1 year. Based on what we have heard here this morning, what the committee has heard, it seems very likely that there would be several potential cases of failure to report under this section.

In the last 3 years, how many cases has the Department brought for violation of this section?

**Mr. Christensen.** My understanding from counsel is there are two people.

**Mr. Kolter.** Two is a minuscule amount.

Can I ask you, what were the penalties, if you can recall?

Mr. CANNON. In this case, we have, as I understand it, two people that we are investigating for willful and knowingly failure to pay. There has not been any prosecutions for that.

Mr. KOLTER. So you are still investigating those?

Mr. CANNON. Yes.

Mr. KOLTER. Well, that doesn't give a producer inclined to cheat Uncle Sam much incentive to file reports, really.

Mr. Christensen, when you were appointed Acting Director, Secretary Hodel promised evenhanded enforcement of the Surface Mining Act. Can you say that collecting taxes only from honest operators and imposing no penalties, or hardly any, on dishonest operators who fail to file, who are deliberately misleading in evenhanded enforcement of the law—would you say that is evenhanded?

Mr. CHRISTENSEN. It wouldn't appear to be so.

Mr. KOLTER. Can we get a commitment from you today that effective implementation of section 402 will be a priority with you?

Mr. CHRISTENSEN. Certainly.

Mr. KOLTER. Thank you very much, Mr. Christensen.

Mr. CHRISTENSEN. Yes, sir.

[The information follows:]

Director commits to effective implementation of Section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Memorandum SEP 10 1985

To: Jed D. Christensen
Acting Director
Office of Surface Mining

[illegible], Acting for
From: Christopher B. Cannon
Associate Solicitor
Division of Surface Mining

Subject: Criminal Sanctions Under Title IV of SMCRA

At the July 11, 1985 hearing before the House Environment Energy and Natural Resources Subcommittee, Representative Kolter (D. Pa.) asked for your commitment that OSM would effectively implement the Surface Mining Act's Title IV criminal provisions. As always, this office remains prepared to recommend prosecution to the Department of Justice of cases OSM refers which contain the necessary evidence for successful prosecution.

The Surface Mining Act provides criminal sanctions for persons who knowingly make a false statement, representation or certification or knowingly fail to make any statement of the amount of coal produced, the method of removal and the type of coal. 30 U.S.C. § 1232(d). The criminal provision does not include the mere failure to pay reclamation fees. The Government bears a significant burden of proof for conviction. The evidence must demonstrate beyond a reasonable doubt that the person knowingly made a false statement or knowingly failed to make a statement required under Section 402(c). The Solicitor's Office will recommend to the Department of Justice the prosecution of any referral from OSM which contains the essential elements of a criminal violation. Nevertheless, we must remain mindful that the Department of Justice may disagree with our evaluations, or depending upon available resources, accord less than top priority to such cases.

Presently, the Knoxville Field Solicitor's Office is actively investigating and reviewing 16 cases for criminal prosecution under 30 U.S.C. § 1232(d). We anticipate a formal recomendation shortly to the United States Attorney for criminal prosecution of several counts for the intentional filing of false statements and failure to file statements. The Pittsburgh Field Solicitor's Office remains actively engaged in an investigation of a number of possible criminal violations of the Act including the intentional filing of false production statements. The Southwest Regional Solicitor's Office is currently investigating a referral for possible criminal prosecution under 30 U.S.C. § 1232(d). Previously, the Southwest Regional Solicitor's Office recommended to the United States Attorney a case for criminal prosecution on five counts for the knowing failure to file production statements. The United States Attorney accepted a guilty plea on one count and the defendant received a suspended sentence.

I am prepared to meet with you to further discuss OSM's implementation of the criminal provisions in 30 U.S.C. § 1232(d).

Mr. **Synar**. One final set of questions, if I could, real quickly.

The inspector general selected operators to follow up to determine the reasons for their apparent failure to report to OSM. There were 50 operators who account for a potential $900,000 in unpaid fees from whom the inspector general requested information which have not yet provided information. Now, OSM expected to complete that review by December 1984.

I would like to ask unanimous consent at this time that a page from the undated Department of the Interior document indicating that review will not be completed by August 1985 be included in the record, and provided to them.

[The information follows:]

ADDITIONAL RESPONSES NEEDED TO CLEAR
AUDIT REPORT FROM FOLLOWUP SYSTEM

| OIG Finding/Recommendation Reference | |
|---|---|
| 3/3 | Provide the results of OSM's review of the additional fees of $192,333 identified by our audit~~, which was scheduled for completion by December 24, 1984~~. |
| **OSM Response:** | Field Offices were instructed in November 1984 to review the OIG's follow-up audits and report to headquarters with their initial findings and a schedule for completion of the work by December 24, 1984. (See Attachment D). ~~Reports have been received, but due to the need to carefully review the reports and a shortage of manpower to conduct the review, provision of a complete response to this~~ item is ~~not possible at this time. We plan to complete~~ the ~~review by August 1985.~~ |

Mr. **Synar**. My question to you: Why the 9-month delay?

Mr. **Christensen**. Apparently it came down to inadequate resources to do the job.

Mr. **Synar**. Inadequate resources. When did you know you had inadequate resources?

Mr. **Christensen**. This moment.

Mr. **Synar**. OK. That is all the questions I have. Let me make a couple of statements in closing, if I could.

First of all, I will call on Mr. Clinger for any closing statements? Mr. Kolter?

Let me take a personal privilege, if I could. Jim Tapper, your parents are out there, are they not, in the audience?

We are very glad to have you all today, and I just want to tell you all that we are very proud of Jim and the excellent work that he does. He only has one fault: he sits on this side of me. [Laughter.]

But he is a great young man and we are tickled to death to have him. He is ornery as heck, but we really appreciate him. I will get off that.

Second, let me take this privilege, as I did yesterday when we were meeting in the marking up. This is the last official hearing that Sandra Harris will be with us, my staff director. She is leaving, and we wish her very well. And from here on, we will have Don Gray, who will be the subcommittee director, and his experience and background is well-known.

Mr. Christensen, let me just say in conclusion that based upon what I have heard it is clear that we still have a very difficult time of accurately estimating how much production goes unreported. And frankly, though I have heard a lot of things today, I think I am convinced that we cannot dismiss this underreporting as a problem; in other words, I think it is still a major problem. Whether this is a significant amount, really, is in the eye of the beholder. But obviously the amount that is being underreported is not really a lot with the national, but, as we pointed out, many States could literally solve their problems with the amount of money that is slipping through the cracks.

I want to say that OSM has sometimes borrowed people from the AML Fee Compliance Program to respond to a crisis of the day. It is important that in managing OSM you give this program the careful attention that it deserves. Quite simply, it is time for OSM to quit dismissing unreported fees as unimportant and focus energy on looking for that debt. It is a tough job, but it has got to be done—very simply.

One last comment. Mr. Esposito has been on the premises of OSM for several months now, as you know, and you have commented to that. In the course of this subcommittee's investigation he has identified some extremely serious problems at the Department. I am hopeful that your response to his taking another committee assignment will not be taken lightly as we are walking away from this, because you ought to see who we are replacing him with.

The next time we conduct a hearing—and we will conduct another hearing, and it will be detailed, and we will bring in the inspector general, and we will bring the auditors in—we hope that we will have tangible evidence of improvement. Tangible evidence of improvement and not rhetoric. That is why I was tough on you today. I want yes and no answers on whether or not I have a commitment out of you, so that when we build this record we are at a starting point to make sure these fees are collected.

I appreciate the fact that you have been at the job 2 months. I appreciate that you have made a commitment today. You have made some very sincere commitments to us. And I hope that from this hearing that we can come back and look, at a later date, at the great success.

And we thank you and all of your people for being here today.

Mr. **Christensen**. Thank you, Mr. Chairman.

Mr. **Synar**. That concludes the hearing.

[Whereupon, at 1:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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